

# Zakarin Declaration

## Exhibit 1

# Robert Kohn Deposition Volume 1

1  
2 UNITED STATES DISTRICT COURT  
3 FOR THE SOUTHERN DISTRICT OF NEW YORK

4 -----x

5 TWELVE SIXTY LLC, ARON  
6 MARDEROSIAN and ROBERT  
7 MARDEROSIAN,

8 Plaintiffs,

9 -against-

10 Civil Action No.:  
11 1:17-CV-01479-PAC

12 EXTREME MUSIC LIBRARY LIMITED,  
13 a division of Sony/ATV Music  
14 Publishing; EXTREME MUSIC  
15 LIMITED; VIACOM INTERNATIONAL  
16 INC., NEW CREATIVE MIX INC.,  
17 HYPE PRODUCTION MUSIC,  
18 Defendants.

19 -----x

20 November 1, 2018  
21 1:00 p.m.

22 Deposition of ROBERT H. KOHN, taken by  
23 Defendants, pursuant to Notice, held at the law  
24 offices of Pryor Cashman, LLP, 7 Times Square, New  
25 York, New York, before Judith Castore, a Certified  
Livenote Reporter and Notary Public of the State of  
New York.

<p style="text-align: right;">Page 2</p> <p>1 2 A P P E A R A N C E S 3 ON BEHALF OF PLAINTIFFS 4 MARDEROSIAN &amp; COHEN, PC 5 1260 Fulton Street 6 Fresno, California 93721 7 559-441-7991 8 BY: MICK MARDEROSIAN, ESQ. 9 mick@mcc-legal.com 10 HEATHER COHEN, ESQ. 11 12 ON BEHALF OF DEFENDANTS - Extreme Music Library 13 Limited, Extreme Music Limited 14 PRYOR CASHMAN, LLP 15 7 Times Square 16 New York, New York 10036 17 212-421-4100 18 BY: DONALD S. ZAKARIN, ESQ. 19 dzakarin@pryorcashman.com 20 ROSS M. BAGLEY, ESQ. 21 rbagley@pryorcashman.com 22 YEVGENIA S. KLEINER, ESQ. 23 ykleiner@pryorcashman.com 24 25 ON BEHALF OF DEFENDANTS - Viacom International, Inc., New Creative Mix, Inc. and Hype Production Music LOEB &amp; LOEB 345 Park Avenue New York, New York 10154 212-407-4000 BY: WOOK J. HWANG, ESQ. whwang@loeb.com ERIN SMITH DENNIS, ESQ. edennis@loeb.com ALSO PRESENT: DAVID J. PRZYGODA, ESQ., Litigation Counsel, Sony Corporation of America</p>	<p style="text-align: right;">Page 4</p> <p>1 KOHN 2 R-O-B-E-R-T H. K-O-H-N, 3 Having been duly sworn by a Notary Public 4 within and for the State of New York, stated an 5 address as 140 East 28th Street, Apartment 5-G, New 6 York, New York 10016, was examined and testified as 7 follows: 8 EXAMINATION BY MR. ZAKARIN: 9 Q Good afternoon, Mr. Kohn. 10 A Good afternoon. 11 Q You've stated your name for 12 the record, so we'll dispense with 13 that. 14 Please give me your 15 educational background. 16 A I have a law degree from 17 Loyola Law School. 18 COURT REPORTER: I'm sorry. 19 If you could just keep your voice 20 up. Law degree from? 21 A Excuse me. 22 Q Loyola Law School -- 23 A Loyola Law School in Los 24 Angeles. I got a JD degree that I got 25 in 1981. If you want prior to that, I</p>
<p style="text-align: right;">Page 3</p> <p>1 2 IT IS HEREBY STIPULATED AND AGREED, by and 3 among counsel for the respective parties hereto, 4 that the filing, sealing and certification of the 5 within deposition shall be and the same are hereby 6 waived. 7 IT IS FURTHER STIPULATED AND AGREED that all 8 objections, except to the form of the question, 9 shall be reserved to the time of trial; 10 IT IS FURTHER STIPULATED AND AGREED that the 11 within deposition may be signed before any Notary 12 Public with the same force and effect as if signed 13 and sworn to before the court. 14 * * * * 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 KOHN 2 was at Cal State Northridge. I 3 graduated with a business degree. I 4 majored in finance, minored in 5 economics. 6 After law school, I took some 7 professional courses on the 8 entertainment business at USC here and 9 there. I have a LLM at Columbia Law 10 School, which I got in 2016. That 11 was -- I graduated with a Kent 12 Scholar -- James Kent Scholar. 13 Q In what area? 14 A Nothing practical. 15 Jurisprudence, biblical jurisprudence, 16 philosophy of law, free speech, 17 theories of property. 18 Q So just a general LLM? 19 A Very general. 20 Q Okay. 21 A Yeah. 22 Q Give me your employment 23 history, please. 24 A Sure. 25 Q After you graduated law</p>

<p style="text-align: right;">Page 18</p> <p>1 KOHN</p> <p>2 you were retained as an expert for</p> <p>3 purposes of testimony?</p> <p>4 A No.</p> <p>5 Q So you were retained --</p> <p>6 A I was an expert from day one.</p> <p>7 Q Okay.</p> <p>8 Because I wanted to</p> <p>9 differentiate if they're</p> <p>10 differentiating in terms of your fees.</p> <p>11 A No.</p> <p>12 Q So can you tell me how much</p> <p>13 you have charged thus far to the</p> <p>14 plaintiffs for your services?</p> <p>15 A Well, I charge at 650 an</p> <p>16 hour; and I have bills that I think</p> <p>17 exceeded 100 hours. I believe it's</p> <p>18 105, 110. I don't remember.</p> <p>19 Q Through what period of time?</p> <p>20 A Starting -- the date of the</p> <p>21 retainer agreement was February 1st. I</p> <p>22 think that was about when it started.</p> <p>23 Q Okay. So --</p> <p>24 A From this year.</p> <p>25 Q Since February 1st you have</p>	<p style="text-align: right;">Page 20</p> <p>1 KOHN</p> <p>2 companies, whether it's Warner Chapel,</p> <p>3 Sony ATV, ABMG.</p> <p>4 A Not in --</p> <p>5 Q Just to distinguish them from</p> <p>6 a production music library.</p> <p>7 A If you're asking in</p> <p>8 connection with this case?</p> <p>9 Q In connection with this case.</p> <p>10 A No.</p> <p>11 Q And I'm actually asking in</p> <p>12 connection with the generation of your</p> <p>13 report.</p> <p>14 A No.</p> <p>15 Q Have you ever been employed</p> <p>16 by a production music library company?</p> <p>17 A I wouldn't call it employed.</p> <p>18 My uncle ran one of the largest</p> <p>19 production music libraries in the world</p> <p>20 of its time, which was Southern Music</p> <p>21 Library which was owned by Peer Music.</p> <p>22 COURT REPORTER: I'm sorry?</p> <p>23 Owned by?</p> <p>24 A Peer Music, P-e-e-r. Peer</p> <p>25 Music.</p>
<p style="text-align: right;">Page 19</p> <p>1 KOHN</p> <p>2 devoted something slightly north of 100</p> <p>3 hours to your work on this case?</p> <p>4 A Yes.</p> <p>5 Q Okay. That's including</p> <p>6 attending depositions and whatever</p> <p>7 else?</p> <p>8 A Yes.</p> <p>9 Q Okay.</p> <p>10 In connection with the</p> <p>11 preparation of your report, did you</p> <p>12 communicate at all verbally or in</p> <p>13 writing with any production music</p> <p>14 library companies?</p> <p>15 A No.</p> <p>16 Q Have you communicated at all</p> <p>17 verbally or in writing with any</p> <p>18 executives of any production music</p> <p>19 library companies?</p> <p>20 A No.</p> <p>21 Q Have you communicated at all</p> <p>22 verbally or in writing with any music</p> <p>23 publishing companies? And when I say</p> <p>24 music publishing companies, I'm</p> <p>25 referring to popular music publishing</p>	<p style="text-align: right;">Page 21</p> <p>1 KOHN</p> <p>2 Q Did you work for him?</p> <p>3 A Well, I provided him with</p> <p>4 advice. I never charged him.</p> <p>5 Q When did you provide him with</p> <p>6 advice?</p> <p>7 A This would have been back in</p> <p>8 the 1980s.</p> <p>9 Q Do you remember the subject</p> <p>10 matter in which you provided him</p> <p>11 advice?</p> <p>12 A Yeah. My best memory is that</p> <p>13 he invited me to his office, and</p> <p>14 because it was during the time in which</p> <p>15 I was writing the first edition of Kohn</p> <p>16 on Music Licensing. I think it was the</p> <p>17 1980s. It could have been the early</p> <p>18 '90s, but I'm pretty sure it was before</p> <p>19 the first edition. As a matter of fact</p> <p>20 I do -- it had to have been in the</p> <p>21 '80s. I was living in Los Angeles. So</p> <p>22 probably prior to '87.</p> <p>23 I had visited his office,</p> <p>24 which was a little one-man office in</p> <p>25 Taluka Lake, California, which is near</p>

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<p style="text-align: right;">Page 22</p> <p>1 KOHN</p> <p>2 Burbank, I think. And I spent all</p> <p>3 morning with him. He took phone calls.</p> <p>4 He was talking to people giving</p> <p>5 licenses. I recall actually something</p> <p>6 pretty funny, at least he thought it</p> <p>7 was funny to me because he had got a</p> <p>8 call from -- that day from a company</p> <p>9 that wanted to use a needle drop in</p> <p>10 a --</p> <p>11 COURT REPORTER: I'm sorry,</p> <p>12 sir. Can you just look this way?</p> <p>13 A A needle drop -- yeah. A</p> <p>14 needle drop in a porno film and they</p> <p>15 came up with a song called Big Hammer.</p> <p>16 And he thought that was funny. And he</p> <p>17 takes the -- he had record albums at</p> <p>18 the time and then he would take a DAT</p> <p>19 tape, D-A-T, digital audiotape and do</p> <p>20 recordings. Stick it in an envelope</p> <p>21 and put a contract with it or license</p> <p>22 with it and send it off to the guy who</p> <p>23 took the phone call.</p> <p>24 And what I -- what I did for</p> <p>25 him because I looked at the license</p>	<p style="text-align: right;">Page 24</p> <p>1 KOHN</p> <p>2 Q Okay.</p> <p>3 So you were not employed by</p> <p>4 Music Production -- a production music</p> <p>5 library company but you did this little</p> <p>6 consulting project on a sync license,</p> <p>7 as it were, for your uncle back in the</p> <p>8 '80s?</p> <p>9 A Well, I would say, yeah. I</p> <p>10 mean, whatever questions he had for me</p> <p>11 and other things that I might have over</p> <p>12 the years that I don't really remember</p> <p>13 frankly.</p> <p>14 Q Have you ever engaged in</p> <p>15 licensing on behalf of a production</p> <p>16 music library company?</p> <p>17 A Not of a production music --</p> <p>18 you said engaged in licensing?</p> <p>19 Q Yeah.</p> <p>20 A Actually issuing a license?</p> <p>21 No.</p> <p>22 Q Have you ever been in</p> <p>23 engaged --</p> <p>24 A Not for a production music</p> <p>25 library.</p>
<p style="text-align: right;">Page 23</p> <p>1 KOHN</p> <p>2 that he did, and by that time I had</p> <p>3 been out of Rudin's office and I had</p> <p>4 some experience in synchronization</p> <p>5 licenses and such, and I was kind of</p> <p>6 surprised how simple that form was.</p> <p>7 And it could be better. And I could</p> <p>8 make it better. And I actually put</p> <p>9 together a synchronization license for</p> <p>10 him, which he thought was too long, and</p> <p>11 I got it down to one page and gave that</p> <p>12 to him and he went ahead and started</p> <p>13 using that. And, you know, I'd always</p> <p>14 see him at family events and things</p> <p>15 like that.</p> <p>16 And over the years we talked</p> <p>17 about what he was doing, et cetera, and</p> <p>18 he was using my license for quite a</p> <p>19 while. So I had that. It was a</p> <p>20 one-man shop at that time, but he</p> <p>21 certainly had a lot of experience in</p> <p>22 dealing with a major production music</p> <p>23 library. And I got a sort of -- got an</p> <p>24 idea of what that was through that</p> <p>25 experience.</p>	<p style="text-align: right;">Page 25</p> <p>1 KOHN</p> <p>2 Q Have you ever been involved</p> <p>3 in licensing on behalf of a</p> <p>4 broadcaster?</p> <p>5 MR. MARDEROSIAN: Object to</p> <p>6 the term "involved."</p> <p>7 Vague, ambiguous.</p> <p>8 A I have never -- I don't</p> <p>9 recall ever working for a broadcaster</p> <p>10 in getting synchronization licenses. I</p> <p>11 did on behalf of a production</p> <p>12 company -- while at Rudin's office we</p> <p>13 represented Warner Brother's Pictures.</p> <p>14 We represented 20th Century Fox. We</p> <p>15 represented Irving Azoff, Front Line</p> <p>16 Management. We represented Scotti</p> <p>17 Brothers.</p> <p>18 There was a period of time at</p> <p>19 Warners Brothers Music when we were</p> <p>20 redoing -- this was probably 1982, '83</p> <p>21 or so -- redoing all of Warner Brothers</p> <p>22 Music's synchronization licenses. It</p> <p>23 was a project that I was heavily</p> <p>24 involved with. I spent most of my time</p> <p>25 on it for several weeks. It was a time</p>

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<p style="text-align: right;">Page 30</p> <p>1 KOHN</p> <p>2 picture, I was directly involved with</p> <p>3 the amount of money that was involved,</p> <p>4 you know, in that. It was a -- you</p> <p>5 come to a point where some fee is</p> <p>6 established and everyone answers for --</p> <p>7 no, most favored nations. So it</p> <p>8 becomes easy at a point.</p> <p>9 There's only so many of these</p> <p>10 things you have to do in order to</p> <p>11 become knowledgeable on how these</p> <p>12 things are done. I don't need to do</p> <p>13 10,000 synchronization licenses in</p> <p>14 order to learn how these things are</p> <p>15 negotiated.</p> <p>16 Q Have you ever worked for a</p> <p>17 PRO in dealing with cue sheets and</p> <p>18 broadcasters?</p> <p>19 A I never worked for a PRO, no.</p> <p>20 Q Now in your report you state</p> <p>21 that acquiring a work on a</p> <p>22 work-for-hire basis does not mean that</p> <p>23 there are no other obligations owed to</p> <p>24 the writer.</p> <p>25 Now, you know that a work for</p>	<p style="text-align: right;">Page 32</p> <p>1 KOHN</p> <p>2 to object.</p> <p>3 It calls for a legal opinion</p> <p>4 and conclusion.</p> <p>5 Q You can answer the question.</p> <p>6 A There are royalty obligations</p> <p>7 that are specified in the contract, and</p> <p>8 there are implied obligations that are</p> <p>9 a part of every contract.</p> <p>10 Q We'll get to the implied</p> <p>11 obligations in due course. Right now</p> <p>12 the question that I asked you was: On</p> <p>13 a work for hire, the copyright owner is</p> <p>14 the acquirer of the rights and that</p> <p>15 acquirer is also under the law of the</p> <p>16 author; isn't that correct?</p> <p>17 MR. MARDEROSIAN: I'm going</p> <p>18 to object.</p> <p>19 Calls for -- excuse me, Bob.</p> <p>20 You need to protect the record.</p> <p>21 I'm going to object as</p> <p>22 calling for a legal opinion and</p> <p>23 conclusion, and it is an</p> <p>24 incomplete hypothetical.</p> <p>25 Therefore, it's vague and</p>
<p style="text-align: right;">Page 31</p> <p>1 KOHN</p> <p>2 hire makes the publisher of the work</p> <p>3 not only the copyright owner but also</p> <p>4 the author; isn't that correct?</p> <p>5 MR. MARDEROSIAN: I'm just</p> <p>6 going to object.</p> <p>7 It calls for a legal opinion</p> <p>8 and conclusion.</p> <p>9 It's vague and overbroad.</p> <p>10 Q You can answer the question.</p> <p>11 A When a record company</p> <p>12 acquires a master from a recording</p> <p>13 artist, it's under a work for hire</p> <p>14 agreement. So -- but under that</p> <p>15 agreement there are royalty obligations</p> <p>16 back to the recording artist. Just</p> <p>17 because they have a work for hire and</p> <p>18 they're the author or considered the</p> <p>19 author of the work, that is the record</p> <p>20 company, doesn't mean they have no</p> <p>21 financial obligation whatsoever to the</p> <p>22 person they're contracting with.</p> <p>23 Q Those royalty obligations are</p> <p>24 specified in the contract, correct?</p> <p>25 MR. MARDEROSIAN: I'm going</p>	<p style="text-align: right;">Page 33</p> <p>1 KOHN</p> <p>2 overbroad.</p> <p>3 A Please read the question</p> <p>4 back.</p> <p>5 Q I can say -- I'll say it</p> <p>6 again, and the objection will be deemed</p> <p>7 to this so we don't have to waste time.</p> <p>8 The acquirer of a work for</p> <p>9 hire under the Copyright Act is not</p> <p>10 merely the owner of the copyright but</p> <p>11 it is also deemed the author of the</p> <p>12 work; isn't that correct?</p> <p>13 A That's a different question</p> <p>14 but I believe the answer to it is yes.</p> <p>15 Q Okay.</p> <p>16 And absent an agreement to</p> <p>17 the contrary the author of the work</p> <p>18 would be entitled to the author share</p> <p>19 of income; isn't that correct?</p> <p>20 MR. MARDEROSIAN: I'm just</p> <p>21 going to object.</p> <p>22 It calls for a legal opinion</p> <p>23 and conclusion. And it is an</p> <p>24 incomplete hypothetical.</p> <p>25</p>

<p style="text-align: right;">Page 54</p> <p>1 KOHN</p> <p>2 said, virtually give away the</p> <p>3 intellectual property in exchange for a</p> <p>4 small upfront fee and potential</p> <p>5 lucrative writer's share of public</p> <p>6 performance royalties.</p> <p>7 The month before this</p> <p>8 agreement was signed they got \$10,000</p> <p>9 from the same company that they signed</p> <p>10 this agreement with for a sync license</p> <p>11 for just -- they kept the intellectual</p> <p>12 property. So they went from \$10,000 on</p> <p>13 a non-work for hire license down to</p> <p>14 \$200 for a work for hire. So that's</p> <p>15 where the word "small" comes from.</p> <p>16 Q I wasn't asking you about the</p> <p>17 word "small."</p> <p>18 A Well, I wanted to clarify my</p> <p>19 answer. You asked me -- you read the</p> <p>20 whole thing to me.</p> <p>21 Q You have to wait -- when I'm</p> <p>22 talking, you wait. When you're</p> <p>23 talking, I'll wait. It will be much</p> <p>24 better that way. Okay?</p> <p>25 A Are you finished?</p>	<p style="text-align: right;">Page 56</p> <p>1 KOHN</p> <p>2 that's what the reports indicate.</p> <p>3 Q That wasn't my question. I</p> <p>4 asked a different question.</p> <p>5 I said --</p> <p>6 A Yes.</p> <p>7 Q -- are those licenses</p> <p>8 listed --</p> <p>9 A Yeah.</p> <p>10 Q -- in the material --</p> <p>11 A They don't have to be</p> <p>12 listed --</p> <p>13 COURT REPORTER: I'm sorry,</p> <p>14 sir. I just need a full question.</p> <p>15 A They don't have to be listed.</p> <p>16 I talked about Aron and Robert</p> <p>17 regularly command \$60,000 for film</p> <p>18 trailers --</p> <p>19 COURT REPORTER: Sir.</p> <p>20 MR. MARDEROSIAN: Slow down.</p> <p>21 Slow down, please.</p> <p>22 A Aron and Robert regularly</p> <p>23 command \$60,000 for film trailers that</p> <p>24 use works they own and control.</p> <p>25 Q I understand --</p>
<p style="text-align: right;">Page 55</p> <p>1 KOHN</p> <p>2 Q No, because now I'm going to</p> <p>3 ask you the question --</p> <p>4 A Good.</p> <p>5 Q -- that you didn't answer.</p> <p>6 You said that we were</p> <p>7 provided all of these licenses. And</p> <p>8 I'm asking you what licenses do you of</p> <p>9 your own knowledge know we were</p> <p>10 provided of the brothers?</p> <p>11 A There's a set of licenses,</p> <p>12 about 15 licenses or -- 15 to 20</p> <p>13 licenses that I've seen in which the</p> <p>14 brothers have licensed to third parties</p> <p>15 of their own music that's not -- songs</p> <p>16 and recordings that are not included in</p> <p>17 either of the contracts in this case,</p> <p>18 in which they licensed over the period</p> <p>19 of time from 2010 until about 2017.</p> <p>20 Q Are those licenses identified</p> <p>21 in the works that you reviewed, the</p> <p>22 materials you reviewed?</p> <p>23 MR. MARDEROSIAN: He's been</p> <p>24 provided with all of the materials</p> <p>25 that were produced. I think</p>	<p style="text-align: right;">Page 57</p> <p>1 KOHN</p> <p>2 A Where do you think I got that</p> <p>3 information?</p> <p>4 Q I'm asking you a different</p> <p>5 question.</p> <p>6 A Well, it's in my report.</p> <p>7 Q So you were provided with</p> <p>8 licenses. That's where you get the</p> <p>9 information from; is that right?</p> <p>10 A Yes.</p> <p>11 Q Okay.</p> <p>12 You also said that we were</p> <p>13 provided those licenses. And I'm</p> <p>14 asking you how do you know that?</p> <p>15 A I just made an assumption on</p> <p>16 that.</p> <p>17 Q So it was an assumption that</p> <p>18 you made while you were sitting here?</p> <p>19 A Yes.</p> <p>20 Q You don't know that as a</p> <p>21 fact?</p> <p>22 A I don't get involved with</p> <p>23 communications between the plaintiff's</p> <p>24 attorneys and you.</p> <p>25 So I have no personal</p>

15 (Pages 54 - 57)



<p style="text-align: right;">Page 58</p> <p>1 KOHN</p> <p>2 knowledge of what they sent you and</p> <p>3 what you sent them.</p> <p>4 Q I understand. All I'm trying</p> <p>5 to do is get a clear record as to when</p> <p>6 you know something and when you are</p> <p>7 assuming something.</p> <p>8 A Well, it's fair enough.</p> <p>9 Q Because there's a difference.</p> <p>10 A It's fair enough.</p> <p>11 Q That's all.</p> <p>12 How many production music</p> <p>13 library work for hire contracts have</p> <p>14 you studied in your career? I know</p> <p>15 these -- these two we know you have.</p> <p>16 But beyond those?</p> <p>17 A I don't remember.</p> <p>18 Q More than 100? More than a</p> <p>19 1,000?</p> <p>20 A I didn't do a lot of</p> <p>21 dealing --</p> <p>22 Q More than two?</p> <p>23 A It might have been more than</p> <p>24 two; but it's probably less than 1,000.</p> <p>25 I mean, it's less than 100.</p>	<p style="text-align: right;">Page 60</p> <p>1 KOHN</p> <p>2 A Production music library</p> <p>3 contracts, yes --</p> <p>4 COURT REPORTER: Sir. I'm</p> <p>5 sorry. Wait. I just need a full</p> <p>6 question.</p> <p>7 MR. ZAKARIN: You're right.</p> <p>8 We'll try to slow it down.</p> <p>9 Q The production music library</p> <p>10 contract?</p> <p>11 MR. MARDEROSIAN: Excuse me.</p> <p>12 It really -- this needs to slow</p> <p>13 down.</p> <p>14 In all due respect to you,</p> <p>15 Don, you need to slow it down with</p> <p>16 the questions. And, Bob, in</p> <p>17 responding to the questions, we</p> <p>18 need a moment, take a breath so</p> <p>19 that we don't wear the court</p> <p>20 reporter out so we can get through</p> <p>21 the deposition today.</p> <p>22 Okay. And I am as guilty as</p> <p>23 anyone in what advice I just gave</p> <p>24 the both of you. So let's get</p> <p>25 that skunk out on the table right</p>
<p style="text-align: right;">Page 59</p> <p>1 KOHN</p> <p>2 Q Less than ten?</p> <p>3 A I haven't done a lot of</p> <p>4 production music library work directly.</p> <p>5 I've never worked for a production</p> <p>6 music library.</p> <p>7 Q I understand.</p> <p>8 A But I've seen production</p> <p>9 music library licenses over time in</p> <p>10 connection with studying and getting</p> <p>11 information from either my father or</p> <p>12 for other people in the industry or</p> <p>13 from sitting on panels with people like</p> <p>14 Mr. Massarsky, who's sitting here at</p> <p>15 the table. I might have been on a</p> <p>16 panel with him at one point or another</p> <p>17 where you pick up what the customs and</p> <p>18 practices are in the music industry.</p> <p>19 Q So you glean that from your</p> <p>20 discussions with people like Massarsky</p> <p>21 or --</p> <p>22 A Or from looking directly at</p> <p>23 the contracts.</p> <p>24 Q The production music library</p> <p>25 contracts --</p>	<p style="text-align: right;">Page 61</p> <p>1 KOHN</p> <p>2 now.</p> <p>3 But I'm just trying to help</p> <p>4 the process so that Mr. Zakarin,</p> <p>5 on behalf of his clients, can get</p> <p>6 your opinions and question the</p> <p>7 opinions that you set forth in</p> <p>8 your report.</p> <p>9 THE WITNESS: Thanks, Mick.</p> <p>10 MR. MARDEROSIAN: All right.</p> <p>11 Q Okay.</p> <p>12 Where were we? Did we have</p> <p>13 an answer? Let's try to get back to</p> <p>14 where we were. Give me a second.</p> <p>15 Now, you gleaned this -- the</p> <p>16 knowledge of the custom and practice</p> <p>17 from being on panels with people like</p> <p>18 Massarsky and from the production music</p> <p>19 library contracts, the work for hire</p> <p>20 contracts you've looked at?</p> <p>21 A And discussions that I've had</p> <p>22 with my Uncle Roy and the advice that I</p> <p>23 might have given him over a period of</p> <p>24 years, that he might have asked me</p> <p>25 questions that I have given him. He</p>

<p style="text-align: right;">Page 62</p> <p>1 KOHN</p> <p>2 was the closest person in my life whose</p> <p>3 full-time business for 40 years was</p> <p>4 running a production music library. He</p> <p>5 was my uncle, and I would see him</p> <p>6 very -- almost every weekend, you know,</p> <p>7 in California.</p> <p>8 Q Is he still alive?</p> <p>9 A No. He passed away last</p> <p>10 year -- or two years ago.</p> <p>11 Q I'm sorry.</p> <p>12 A He was 91, lived a good life.</p> <p>13 Q But as you testified already,</p> <p>14 in connection with your forming of your</p> <p>15 report, you did not consult with, talk</p> <p>16 to any production music libraries or</p> <p>17 executives at those companies?</p> <p>18 A No.</p> <p>19 Q Okay.</p> <p>20 Now, you've talked about</p> <p>21 having looked at some, I think, 15</p> <p>22 licenses, I think you said, of the --</p> <p>23 of the plaintiff's work -- of their</p> <p>24 self-published works, I guess it is; is</p> <p>25 that right?</p>	<p style="text-align: right;">Page 64</p> <p>1 KOHN</p> <p>2 public performance income; is that</p> <p>3 right?</p> <p>4 A Yes.</p> <p>5 Q And that would be hopefully</p> <p>6 generated by successful placements of</p> <p>7 their works?</p> <p>8 A Yes.</p> <p>9 Q Placements with whom?</p> <p>10 A Placements with anyone</p> <p>11 producing audiovisual works that are</p> <p>12 likely to be broadcast by organizations</p> <p>13 that are licensed by one of the</p> <p>14 productions -- one of the PROs or</p> <p>15 particularly in this case BMI.</p> <p>16 Q Well, in this case we're</p> <p>17 dealing with the 2010 agreement. Why</p> <p>18 don't we just put that out there now</p> <p>19 just so we have it. Okay? We're not</p> <p>20 going to directly refer to it right</p> <p>21 this minute, but you might as well mark</p> <p>22 it as K Exhibit 2 or K2.</p> <p>23 (Blanket Composer Agreement</p> <p>24 (Direct) dated as of May 19, 2010,</p> <p>25 was marked K Exhibit 2, for</p>
<p style="text-align: right;">Page 63</p> <p>1 KOHN</p> <p>2 A Yes.</p> <p>3 Q Have you examined any of</p> <p>4 their other production music library</p> <p>5 agreements other than the two in this</p> <p>6 case?</p> <p>7 A I don't know whether they</p> <p>8 have other production music library</p> <p>9 contracts.</p> <p>10 Q You're not aware of that?</p> <p>11 A No.</p> <p>12 Q Okay.</p> <p>13 A One way or the other, I don't</p> <p>14 know whether they have or have not. I</p> <p>15 certainly haven't looked at that.</p> <p>16 Q You haven't looked at them?</p> <p>17 A No.</p> <p>18 Q If they exist?</p> <p>19 A Well, if they exist, I</p> <p>20 haven't looked at them.</p> <p>21 Q Okay. Fair enough.</p> <p>22 Now, in your report what we</p> <p>23 just looked at is what they were -- an</p> <p>24 important consideration was the</p> <p>25 potential lucrative writer share of</p>	<p style="text-align: right;">Page 65</p> <p>1 KOHN</p> <p>2 identification, as of this date.)</p> <p>3 Q You can just put that next to</p> <p>4 it. I'm not going to be questioning</p> <p>5 you about it.</p> <p>6 A Okay.</p> <p>7 Q But I'll ask you one</p> <p>8 question. Can you identify that as the</p> <p>9 2010 agreement that you reviewed?</p> <p>10 A Yes.</p> <p>11 MR. MARDEROSIAN: Don, is</p> <p>12 this the one that's not</p> <p>13 Bates-stamped? Is this the one</p> <p>14 that you folks produced pursuant</p> <p>15 to Judge Crotty's order or is this</p> <p>16 one that's been produced in</p> <p>17 discovery or, excuse me, or is</p> <p>18 this the one that the plaintiff's</p> <p>19 produced.</p> <p>20 MR. BAGLEY: I believe that</p> <p>21 this is the copy that you sent to</p> <p>22 the court after he asked for a</p> <p>23 more legible copy of the</p> <p>24 agreements.</p> <p>25 MR. MARDEROSIAN: Yes.</p>

<p style="text-align: right;">Page 98</p> <p>1 KOHN</p> <p>2 performance income of sound recordings.</p> <p>3 There's a performer share.</p> <p>4 A Well, a performer share.</p> <p>5 Okay. I misspoke. Correct.</p> <p>6 Performer share.</p> <p>7 Q I just want to make sure that</p> <p>8 we're not confusing the record.</p> <p>9 MR. MARDEROSIAN: Well, then</p> <p>10 ask questions as opposed to making</p> <p>11 statements --</p> <p>12 THE WITNESS: So that.</p> <p>13 MR. MARDEROSIAN: Excuse</p> <p>14 me -- to the witness. This is</p> <p>15 supposed to be question --</p> <p>16 MR. ZAKARIN: The witness --</p> <p>17 MR. MARDEROSIAN: Hold on.</p> <p>18 MR. ZAKARIN: -- accidentally</p> <p>19 misspoke.</p> <p>20 MR. MARDEROSIAN: It's</p> <p>21 supposed to be a question and</p> <p>22 answer process. I know that you</p> <p>23 believe in what you're stating,</p> <p>24 but that's not the point for this</p> <p>25 process. It's question and</p>	<p style="text-align: right;">Page 100</p> <p>1 KOHN</p> <p>2 In terms of the 2010</p> <p>3 agreement, Exhibit K2, can you identify</p> <p>4 any provision in it which obligated</p> <p>5 Viacom as a music publisher, meaning</p> <p>6 New Remote Productions, to file cue</p> <p>7 sheets with BMI?</p> <p>8 MR. MARDEROSIAN: I'm just</p> <p>9 going to object. It calls for a</p> <p>10 legal opinion and conclusion.</p> <p>11 A I'm going to take a minute to</p> <p>12 look through this.</p> <p>13 Q Please do.</p> <p>14 A Because there's a difference</p> <p>15 between this agreement and the other</p> <p>16 agreement as to what they said.</p> <p>17 Q Please do.</p> <p>18 A I think I can treat this the</p> <p>19 way I said it before, in that whether</p> <p>20 there's something specific in here or</p> <p>21 not, what music publishers do is in</p> <p>22 administering the rights acquired from</p> <p>23 songwriters, whether it's on a work for</p> <p>24 hire basis or a copyright assignment</p> <p>25 basis or an administration basis where</p>
<p style="text-align: right;">Page 99</p> <p>1 KOHN</p> <p>2 answer.</p> <p>3 If he's wrong, point that out</p> <p>4 at a later time before the court</p> <p>5 or at the time of trial.</p> <p>6 MR. ZAKARIN: I think I</p> <p>7 helped your witness to correct a</p> <p>8 misstatement that was inadvertent.</p> <p>9 THE WITNESS: It was</p> <p>10 inadvertent. It wasn't advertent.</p> <p>11 It was a performers.</p> <p>12 The performer doesn't</p> <p>13 register the fact that they -- if they</p> <p>14 don't put their name on Sound Exchange</p> <p>15 and attach themselves to some metadata</p> <p>16 of some kind. They're not going to get</p> <p>17 paid at all.</p> <p>18 Now, when you say they</p> <p>19 registered at Sound Exchange, that</p> <p>20 could mean a lot of things and I -- and</p> <p>21 we have to look at the facts. And I</p> <p>22 certainly have no personal knowledge of</p> <p>23 what they did or didn't do with respect</p> <p>24 to Sound Exchange in those recordings.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 101</p> <p>1 KOHN</p> <p>2 they have an administration agreement,</p> <p>3 their responsibility is going to be to</p> <p>4 do those things necessary for the song</p> <p>5 writer to receive the benefit of the</p> <p>6 bargain they made in signing the</p> <p>7 contract.</p> <p>8 So the answer is, yes, they</p> <p>9 have an obligation to review cue sheets</p> <p>10 with respect -- if the cue sheets have</p> <p>11 mistakes in them, they're not going to</p> <p>12 get paid. BMI says that. The other</p> <p>13 thing is if the mistakes were caused by</p> <p>14 the administrator as it was in this</p> <p>15 case by apparently providing very bad</p> <p>16 metadata where I've seen cue sheets</p> <p>17 that have the word Mix Tape as the name</p> <p>18 of the composer, and that wasn't just</p> <p>19 one that I had in my report.</p> <p>20 Mr. Marderosian yesterday</p> <p>21 pointed out to one of your expert</p> <p>22 witnesses who had never even seen those</p> <p>23 before. He seemed -- his face looked</p> <p>24 shocked when he saw the word "Mix</p> <p>25 Tape," which is the name of a library</p>

<p style="text-align: right;">Page 102</p> <p>1 KOHN</p> <p>2 that your client runs as the name of</p> <p>3 the composer. Now, how did that</p> <p>4 happen, I say rhetorically.</p> <p>5 So that -- when they cause</p> <p>6 mistakes like that, they have every</p> <p>7 obligation to fix the mistake. Rob and</p> <p>8 Aron didn't make those mistakes.</p> <p>9 Q Tell me something. You just</p> <p>10 said that our client provided very bad</p> <p>11 metadata.</p> <p>12 Have you seen the metadata?</p> <p>13 Have you seen the metadata?</p> <p>14 MR. MARDEROSIAN: Object.</p> <p>15 It's vague and overbroad.</p> <p>16 What metadata are you</p> <p>17 referring to?</p> <p>18 MR. ZAKARIN: He's just --</p> <p>19 THE WITNESS: I don't need</p> <p>20 the see metadata.</p> <p>21 MR. MARDEROSIAN: Hold on.</p> <p>22 Excuse me.</p> <p>23 We made a request for</p> <p>24 production of the hard drives, and</p> <p>25 you said that they don't exist any</p>	<p style="text-align: right;">Page 104</p> <p>1 KOHN</p> <p>2 MR. ZAKARIN: You are --</p> <p>3 wait. Shh. Shh. That's right.</p> <p>4 MR. MARDEROSIAN: In the</p> <p>5 depositions.</p> <p>6 MR. ZAKARIN: There is no</p> <p>7 such --</p> <p>8 MR. MARDEROSIAN: In the</p> <p>9 depositions.</p> <p>10 MR. ZAKARIN: I don't care.</p> <p>11 It doesn't matter. That has</p> <p>12 nothing to do with my question.</p> <p>13 You're vamping now, Mick, and</p> <p>14 it's not very effective.</p> <p>15 MR. MARDEROSIAN: I'm not</p> <p>16 vamping at all.</p> <p>17 MR. ZAKARIN: You are.</p> <p>18 There's a question on the record.</p> <p>19 You answer it.</p> <p>20 Q Have you seen any of the</p> <p>21 metadata that you have now stated was</p> <p>22 bad?</p> <p>23 A The word "Mix Tape" is part</p> <p>24 of the metadata. So the answer is yes.</p> <p>25 Q You don't know it is, do you?</p>
<p style="text-align: right;">Page 103</p> <p>1 KOHN</p> <p>2 longer.</p> <p>3 So are you now changing that?</p> <p>4 MR. ZAKARIN: Yeah. The</p> <p>5 witness has --</p> <p>6 MR. MARDEROSIAN: Do they</p> <p>7 exist or not?</p> <p>8 MR. ZAKARIN: The witness has</p> <p>9 made a statement, and I've asked</p> <p>10 him the appropriate question.</p> <p>11 Q Have you seen the metadata</p> <p>12 that you said was bad?</p> <p>13 MR. MARDEROSIAN:</p> <p>14 Mr. Zakarin, I asked for the</p> <p>15 metadata. I wanted to see the</p> <p>16 metadata that Dan White and Russel</p> <p>17 Emanuel were sending with the</p> <p>18 audio tracks. And I have been</p> <p>19 repeatedly told through the</p> <p>20 discovery of this case it no</p> <p>21 longer exists.</p> <p>22 Are you now changing -- does</p> <p>23 it exist or not?</p> <p>24 MR. BAGLEY: Where was that</p> <p>25 discovery request?</p>	<p style="text-align: right;">Page 105</p> <p>1 KOHN</p> <p>2 A Yes, I do. How else would</p> <p>3 that --</p> <p>4 MR. MARDEROSIAN: Hold on.</p> <p>5 You're arguing now.</p> <p>6 Let's take a break. We're</p> <p>7 taking a break.</p> <p>8 You need to control yourself</p> <p>9 and stop arguing with the witness.</p> <p>10 MR. ZAKARIN: I'm fine.</p> <p>11 MR. MARDEROSIAN: Let's take</p> <p>12 a break.</p> <p>13 MR. ZAKARIN: I'm fine.</p> <p>14 MR. MARDEROSIAN: You're</p> <p>15 arguing with the witness.</p> <p>16 MR. ZAKARIN: You can take a</p> <p>17 break, but I am fine.</p> <p>18 MR. MARDEROSIAN: We're going</p> <p>19 to take a break because you're --</p> <p>20 you need to calm down.</p> <p>21 (Whereupon, a brief recess</p> <p>22 was taken.)</p> <p>23 Q It's a simple question.</p> <p>24 MR. ZAKARIN: This is working</p> <p>25 now?</p>

27 (Pages 102 - 105)

<p style="text-align: right;">Page 106</p> <p>1 KOHN</p> <p>2 COURT REPORTER: It should</p> <p>3 be, yes.</p> <p>4 MR. ZAKARIN: Okay.</p> <p>5 MR. MARDEROSIAN: When you</p> <p>6 say "simple question," we really</p> <p>7 don't need remarks like that on</p> <p>8 the record, Don. That's</p> <p>9 argumentative.</p> <p>10 MR. ZAKARIN: Thank you,</p> <p>11 Mick.</p> <p>12 Q Mr. Kohn, you haven't seen</p> <p>13 any of the metadata; isn't that</p> <p>14 correct?</p> <p>15 A What I testified to earlier</p> <p>16 is that when I saw the word "Mix Tape"</p> <p>17 as the name of a composer that I was</p> <p>18 looking at the metadata.</p> <p>19 Q You haven't seen any of the</p> <p>20 metadata that was provided by Extreme</p> <p>21 to any broadcaster, have you?</p> <p>22 MR. MARDEROSIAN: I'm going</p> <p>23 to object. It's vague and</p> <p>24 overbroad.</p> <p>25 Are you talking about the</p>	<p style="text-align: right;">Page 108</p> <p>1 KOHN</p> <p>2 A Kelsey -- there was a</p> <p>3 deposition by a Kelsey. I can't</p> <p>4 remember if that's her first name or</p> <p>5 last name, where she was talking about</p> <p>6 the responsibility when the metadata</p> <p>7 management was in the UK by Extreme.</p> <p>8 Q Now --</p> <p>9 A And that was changing all the</p> <p>10 time. So I think about that, and I</p> <p>11 wonder what you mean by which metadata.</p> <p>12 There's lots of metadata that</p> <p>13 could be used to produce and to give</p> <p>14 information to broadcasters. When I</p> <p>15 see a cue sheet, usually it is</p> <p>16 comprised of entries that are taken</p> <p>17 from metadata. So to answer your</p> <p>18 question when I'm looking at the cue</p> <p>19 sheet and I see errors that seem to me</p> <p>20 were either the result of manipulated</p> <p>21 metadata intentionally or someone</p> <p>22 intentionally eliminating the</p> <p>23 composer's name, I don't know what to</p> <p>24 make of it.</p> <p>25 So have I seen hard drives of</p>
<p style="text-align: right;">Page 107</p> <p>1 KOHN</p> <p>2 hard drives that Kelsey Dewald</p> <p>3 testified to? Is that what you're</p> <p>4 talking about, the electronic</p> <p>5 information that Extreme, even</p> <p>6 your own expert said Extreme</p> <p>7 provided to the broadcasters? Is</p> <p>8 that what you're asking him, the</p> <p>9 actual hard drives? Because they</p> <p>10 haven't been produced in this</p> <p>11 case.</p> <p>12 MR. ZAKARIN: I understand.</p> <p>13 Q You can answer the question.</p> <p>14 Have you seen any of the</p> <p>15 metadata that was supplied by Extreme</p> <p>16 either through hard drives or on its</p> <p>17 website to any broadcaster?</p> <p>18 MR. MARDEROSIAN: I'm still</p> <p>19 going to object as vague.</p> <p>20 MR. ZAKARIN: You can answer.</p> <p>21 MR. MARDEROSIAN: And</p> <p>22 compound.</p> <p>23 A I'm thinking now back to a</p> <p>24 woman named Kelsey.</p> <p>25 Q Who's that?</p>	<p style="text-align: right;">Page 109</p> <p>1 KOHN</p> <p>2 anything? No. Hard drives were not</p> <p>3 given to me. Generally when you get</p> <p>4 metadata, it can be in the form of a</p> <p>5 electronic spreadsheet file. I've had</p> <p>6 a lot of spreadsheets sent to me in the</p> <p>7 course of my report that I've taken a</p> <p>8 look at. I'm not sure which one might</p> <p>9 have been the metadata that you're</p> <p>10 talking about.</p> <p>11 Q So you don't know if you've</p> <p>12 seen any metadata; is that right?</p> <p>13 MR. MARDEROSIAN: Objection.</p> <p>14 That's misstating the</p> <p>15 testimony, the answer just given.</p> <p>16 It's argumentative as well.</p> <p>17 Q You can answer.</p> <p>18 A I've already answered that</p> <p>19 question.</p> <p>20 Q No. You can answer the</p> <p>21 question now.</p> <p>22 A I've already --</p> <p>23 Q You don't get to decide.</p> <p>24 A I've already answered it.</p> <p>25 Q So you're refusing to answer</p>



<p style="text-align: right;">Page 110</p> <p>1 KOHN</p> <p>2 the question?</p> <p>3 A No, I already answered the</p> <p>4 question.</p> <p>5 Q Well, I asked you a different</p> <p>6 question. If you don't want to answer</p> <p>7 it, just say so.</p> <p>8 MR. MARDEROSIAN: Mr. Zakarin</p> <p>9 ,you're arguing with the witness.</p> <p>10 He told you that he answered the</p> <p>11 question. If you disagree, you</p> <p>12 must take it up with the court.</p> <p>13 MR. ZAKARIN: I will.</p> <p>14 Q Now Mr. Kohn, have you gone</p> <p>15 onto the website of Extreme and</p> <p>16 examined any of the metadata?</p> <p>17 A Yes. Well, I've gone onto</p> <p>18 the website of Extreme; and I've done a</p> <p>19 number of searches. And if you've seen</p> <p>20 ISRC codes -- I'm sorry --</p> <p>21 COURT REPORTER: I'm sorry?</p> <p>22 ISRC codes?</p> <p>23 A ISW -- ISWC codes, perhaps</p> <p>24 ISRC codes. So if -- that is typically</p> <p>25 part of metadata. So that if you're</p>	<p style="text-align: right;">Page 112</p> <p>1 KOHN</p> <p>2 Kelsey. But that had to be fixed. I</p> <p>3 don't know what --</p> <p>4 Q But --</p> <p>5 A I don't know -- I started</p> <p>6 working on this case last February.</p> <p>7 And I don't know when that declaration</p> <p>8 was filed. I don't know when the</p> <p>9 metadata was fixed. So it was -- so I</p> <p>10 don't --</p> <p>11 Q Go ahead.</p> <p>12 A You know, I'm trying to get</p> <p>13 back to your question and I'm kind of</p> <p>14 looping back and finding nothing. So</p> <p>15 go ahead.</p> <p>16 Q So it's your recollection, as</p> <p>17 long as you brought it up, that</p> <p>18 Mr. Pounder said that the metadata or</p> <p>19 the -- or something was wrong with the</p> <p>20 IWC code?</p> <p>21 MR. MARDEROSIAN: Objection.</p> <p>22 A That's my recollection.</p> <p>23 Q As opposed to him saying that</p> <p>24 the outward facing website did not have</p> <p>25 the accurate information but that the</p>
<p style="text-align: right;">Page 111</p> <p>1 KOHN</p> <p>2 asking whether I've seen metadata on</p> <p>3 the website, the answer is yes.</p> <p>4 Q Okay. Have you seen any</p> <p>5 metadata on the website with respect to</p> <p>6 the Marderosians' works that improperly</p> <p>7 identifies the composers, the title of</p> <p>8 the work, the publisher or the PRO?</p> <p>9 MR. MARDEROSIAN: I'm just</p> <p>10 going to object as vague and</p> <p>11 overbroad.</p> <p>12 A I think it's also too narrow</p> <p>13 because I don't know what ISRC code and</p> <p>14 what ISWC code I was seeing -- looking</p> <p>15 at. But in Dan Pounder's deposition --</p> <p>16 I'm sorry -- in Dan Pounder's</p> <p>17 declaration that was attached to a</p> <p>18 motion to dismiss or objection to a</p> <p>19 motion to dismiss, I'm not sure which</p> <p>20 it was, I guess it was the motion to</p> <p>21 dismiss, he talks about that there was</p> <p>22 flaws in the metadata. He doesn't</p> <p>23 explain what caused the flaws in the</p> <p>24 metadata. That was changing over a</p> <p>25 period of time, according to this woman</p>	<p style="text-align: right;">Page 113</p> <p>1 KOHN</p> <p>2 inside website had the information.</p> <p>3 You don't recall what he</p> <p>4 said?</p> <p>5 MR. MARDEROSIAN: I'm going</p> <p>6 to object. It's vague.</p> <p>7 Q Is it --</p> <p>8 MR. MARDEROSIAN: Vague and</p> <p>9 overbroad.</p> <p>10 MR. ZAKARIN: I'll withdraw</p> <p>11 the question.</p> <p>12 Q Is it your -- do you recall</p> <p>13 what it was that he actually said in</p> <p>14 his reply affidavit?</p> <p>15 A I'm telling you now that I,</p> <p>16 and I think I said it earlier, I</p> <p>17 vaguely recollect him saying something</p> <p>18 about flawed metadata in his</p> <p>19 declaration. I don't remember</p> <p>20 precisely what he said in his</p> <p>21 declaration.</p> <p>22 Q Okay.</p> <p>23 In terms of the, you know,</p> <p>24 cue sheets that you've seen that have</p> <p>25 some erroneous information, have you</p>

<p style="text-align: right;">Page 114</p> <p>1 KOHN</p> <p>2 compared any of those cue sheets to</p> <p>3 other cue sheets for the same songs</p> <p>4 that have correct information?</p> <p>5 MR. MARDEROSIAN: Just going</p> <p>6 to object that the question as</p> <p>7 phrased is vague and ambiguous.</p> <p>8 What body of cue sheets are</p> <p>9 you referring to, Don?</p> <p>10 MR. ZAKARIN: The ones that</p> <p>11 the witness talked about having</p> <p>12 improper information such as Mix</p> <p>13 Tape on it. That's what he's just</p> <p>14 testified to. That's what the</p> <p>15 question is directed to, Mick.</p> <p>16 MR. MARDEROSIAN: Just so</p> <p>17 we're clear, and I apologize, but</p> <p>18 there are BMI produced cue sheets</p> <p>19 in this case. There are ASCAP</p> <p>20 produced cue sheets in this case.</p> <p>21 There are Viacom produced cue</p> <p>22 sheets in this case. So there are</p> <p>23 various sources of cue sheets.</p> <p>24 Which ones are you referring</p> <p>25 to that -- in your question?</p>	<p style="text-align: right;">Page 116</p> <p>1 KOHN</p> <p>2 Do you understand the</p> <p>3 question?</p> <p>4 THE WITNESS: No, I don't.</p> <p>5 Q Okay. You're not supposed to</p> <p>6 if your counsel professes not to. So</p> <p>7 that was very good.</p> <p>8 Let me try and do this again.</p> <p>9 MR. MARDEROSIAN: That's not</p> <p>10 necessary, Don, but anyways.</p> <p>11 MR. ZAKARIN: I found it</p> <p>12 necessary.</p> <p>13 MR. MARDEROSIAN: Remember</p> <p>14 control.</p> <p>15 MR. ZAKARIN: I am.</p> <p>16 MR. MARDEROSIAN: We</p> <p>17 agreed -- both you and I agreed to</p> <p>18 control.</p> <p>19 MR. ZAKARIN: I'm exercising</p> <p>20 great control, Mick. In fact,</p> <p>21 extraordinary control.</p> <p>22 Q My question is --</p> <p>23 MR. MARDEROSIAN: Mine comes</p> <p>24 more naturally.</p> <p>25 Q -- with respect to the</p>
<p style="text-align: right;">Page 115</p> <p>1 KOHN</p> <p>2 MR. ZAKARIN: I'm referring</p> <p>3 to the ones that the witness is</p> <p>4 talking about. That's what I am</p> <p>5 referring to. I couldn't care</p> <p>6 less who produced the cue sheets.</p> <p>7 I'm talking about the ones that</p> <p>8 he's testified had erroneous</p> <p>9 information and from which he has</p> <p>10 drawn the conclusion that the</p> <p>11 metadata was flawed.</p> <p>12 That's what I am asking him</p> <p>13 about.</p> <p>14 MR. MARDEROSIAN: What's the</p> <p>15 question? Has he seen --</p> <p>16 MR. ZAKARIN: If you would</p> <p>17 listen --</p> <p>18 MR. MARDEROSIAN: -- flawed</p> <p>19 information?</p> <p>20 MR. ZAKARIN: -- if you would</p> <p>21 not interrupt, you would hear the</p> <p>22 question.</p> <p>23 MR. MARDEROSIAN: Well, it's</p> <p>24 not about interrupting. It's</p> <p>25 about understanding the question.</p>	<p style="text-align: right;">Page 117</p> <p>1 KOHN</p> <p>2 erroneous cue sheets that you</p> <p>3 reference -- you recall referencing</p> <p>4 some erroneous cue sheets?</p> <p>5 MR. MARDEROSIAN: He didn't</p> <p>6 say some. You're arguing again.</p> <p>7 MR. ZAKARIN: One. You want</p> <p>8 to make --</p> <p>9 MR. MARDEROSIAN: Don't argue</p> <p>10 the case. Just ask the question.</p> <p>11 Q You have seen more than one</p> <p>12 erroneous cue sheet?</p> <p>13 A You mean cue sheets that</p> <p>14 contained --</p> <p>15 Q Mistaken information or</p> <p>16 incomplete information, one or the</p> <p>17 other.</p> <p>18 A Or manipulated information.</p> <p>19 Q You -- we'll talk about</p> <p>20 whether it's manipulated. You're</p> <p>21 drawing a conclusion on manipulated,</p> <p>22 aren't you?</p> <p>23 A You're drawing a conclusion</p> <p>24 on mistaken.</p> <p>25 Q When I say that that they</p>

<p style="text-align: right;">Page 118</p> <p>1 KOHN</p> <p>2 didn't have corrected --</p> <p>3 A I don't know whether --</p> <p>4 Q -- they didn't have correct</p> <p>5 information. I'm not making a value</p> <p>6 judgment as to intent, manipulation,</p> <p>7 how it got there. I'm simply dealing</p> <p>8 with a cue sheet that did not have</p> <p>9 either complete or accurate</p> <p>10 information.</p> <p>11 A The word mistake will connote</p> <p>12 innocence. And I don't see, given the</p> <p>13 cue sheets that I've looked at, the</p> <p>14 ones that had incorrect -- I mean</p> <p>15 literally way off the charts incorrect</p> <p>16 information would seem to me coming</p> <p>17 from metadata that one of the</p> <p>18 depositions say was manipulated in the</p> <p>19 UK by somebody.</p> <p>20 I have seen a number of cue</p> <p>21 sheets. I've seen lots of things</p> <p>22 produced to me. I've looked at cue</p> <p>23 sheets, a whole slew of them, perused</p> <p>24 them. And all I could say is I pointed</p> <p>25 out the ones that, as I did in my</p>	<p style="text-align: right;">Page 120</p> <p>1 KOHN</p> <p>2 no?</p> <p>3 A I didn't go to the</p> <p>4 broadcaster -- which broadcaster?</p> <p>5 Q The broadcaster that had the</p> <p>6 mistaken or the incorrect information</p> <p>7 on the cue sheet?</p> <p>8 A Well, I don't know whether it</p> <p>9 was the broadcaster who produced the</p> <p>10 cue sheet or whether it was the</p> <p>11 producer who produced the cue sheet.</p> <p>12 Are you assuming --</p> <p>13 Q Did you go to the producer?</p> <p>14 MR. MARDEROSIAN: Hold on.</p> <p>15 Go ahead.</p> <p>16 Q Did you go to the producer?</p> <p>17 A I didn't go to -- I didn't go</p> <p>18 to anyone on the outside to ask them</p> <p>19 who produced.</p> <p>20 Q Okay. Did you go to Extreme</p> <p>21 and ask them?</p> <p>22 MR. MARDEROSIAN: Wait a</p> <p>23 second. Hold on, please.</p> <p>24 Okay. I object to the</p> <p>25 question.</p>
<p style="text-align: right;">Page 119</p> <p>1 KOHN</p> <p>2 report, and Mick's produced to your</p> <p>3 expert witnesses yesterday a number of</p> <p>4 them that say the composer's name is</p> <p>5 Mix Tape, which is the name of the</p> <p>6 library.</p> <p>7 Q Okay.</p> <p>8 Now, do you know how Mix Tape</p> <p>9 got listed there? Do you know?</p> <p>10 MR. MARDEROSIAN: Objection.</p> <p>11 Vague and overbroad.</p> <p>12 A I have no personal</p> <p>13 knowledge --</p> <p>14 Q Okay. Did you --</p> <p>15 A -- of how the word --</p> <p>16 Q Go ahead, please.</p> <p>17 A -- Mix Tape gets in there. I</p> <p>18 have my suspicions, but I have no</p> <p>19 personal knowledge of how it got there.</p> <p>20 Q So you didn't go to --</p> <p>21 MR. MARDEROSIAN: Are you</p> <p>22 done with your answer?</p> <p>23 A Yes, I am.</p> <p>24 Q You didn't go to the</p> <p>25 broadcaster and ask, did you? Yes or</p>	<p style="text-align: right;">Page 121</p> <p>1 KOHN</p> <p>2 You mean, did he go to your</p> <p>3 client and have a discussion with</p> <p>4 your client?</p> <p>5 MR. ZAKARIN: Yeah, did he</p> <p>6 inquire of anybody?</p> <p>7 A I looked at the evidence that</p> <p>8 was presented to me. And there is</p> <p>9 clear evidence from someone who works</p> <p>10 for Viacom that the metadata was</p> <p>11 changed and manipulated in the UK. All</p> <p>12 right? And it seems to me that the</p> <p>13 misinformation that you're saying is in</p> <p>14 these cue sheets or however you want</p> <p>15 to -- incorrectly putting a name of</p> <p>16 your client's library as the composer</p> <p>17 name, gets there through information</p> <p>18 provided to the broadcaster or the</p> <p>19 producer. That's generally how it gets</p> <p>20 there.</p> <p>21 I can't imagine how a</p> <p>22 broadcaster or producer would confuse a</p> <p>23 composer's name with the name of a</p> <p>24 library or the word Mix Tape.</p> <p>25 Q So --</p>



<p style="text-align: right;">Page 122</p> <p>1 KOHN</p> <p>2 A But, no, I haven't had any --</p> <p>3 make any phone calls to your client.</p> <p>4 Q But you've concluded that the</p> <p>5 person filling out the cue sheet could</p> <p>6 not have possibly made an honest</p> <p>7 mistake; is that your testimony?</p> <p>8 MR. MARDEROSIAN: Hold on.</p> <p>9 I'm going to object to the</p> <p>10 question.</p> <p>11 This is calling for</p> <p>12 speculation. It's argumentative.</p> <p>13 It's vague and overbroad.</p> <p>14 MR. ZAKARIN: Everything the</p> <p>15 witness has testified to in the</p> <p>16 last 20 minutes has been rank</p> <p>17 speculation. Why should we stop</p> <p>18 now?</p> <p>19 MR. MARDEROSIAN: Incorrect.</p> <p>20 Don, stop arguing the case.</p> <p>21 Kelsey Dewald testified that from</p> <p>22 Santa Monica Russel Emanuel and</p> <p>23 Dan Knight continually changed the</p> <p>24 metadata that went to the</p> <p>25 broadcasters.</p>	<p style="text-align: right;">Page 124</p> <p>1 KOHN</p> <p>2 testimony into the record.</p> <p>3 MR. ZAKARIN: I want you to</p> <p>4 do it.</p> <p>5 MR. MARDEROSIAN: And I'll do</p> <p>6 it tomorrow with your expert to</p> <p>7 see if he's --</p> <p>8 MR. ZAKARIN: Please --</p> <p>9 MR. MARDEROSIAN: -- familiar</p> <p>10 with it.</p> <p>11 MR. ZAKARIN: -- please do</p> <p>12 it.</p> <p>13 MR. MARDEROSIAN: Because the</p> <p>14 evidence, even your own experts</p> <p>15 use --</p> <p>16 MR. ZAKARIN: Please do it.</p> <p>17 MR. MARDEROSIAN: Let me</p> <p>18 finish.</p> <p>19 Even Mr. Katz agreed Extreme</p> <p>20 controlled all of the metadata</p> <p>21 that went to --</p> <p>22 MR. ZAKARIN: No dispute.</p> <p>23 MR. MARDEROSIAN: -- the</p> <p>24 broadcasters. That in and of</p> <p>25 itself is a breach of contract</p>
<p style="text-align: right;">Page 123</p> <p>1 KOHN</p> <p>2 MR. ZAKARIN: There's no such</p> <p>3 testimony.</p> <p>4 MR. MARDEROSIAN: Hold on.</p> <p>5 You know --</p> <p>6 MR. ZAKARIN: There's no such</p> <p>7 testimony.</p> <p>8 MR. MARDEROSIAN: You opened</p> <p>9 the door --</p> <p>10 MR. ZAKARIN: There's no such</p> <p>11 testimony.</p> <p>12 MR. MARDEROSIAN: You want me</p> <p>13 to read it into the record?</p> <p>14 MR. ZAKARIN: Yes.</p> <p>15 MR. MARDEROSIAN: Because if</p> <p>16 you're telling your client --</p> <p>17 MR. ZAKARIN: Yes. Read it</p> <p>18 into the record.</p> <p>19 MR. MARDEROSIAN: Let me get</p> <p>20 it. I can absolutely --</p> <p>21 MR. ZAKARIN: On the next</p> <p>22 break, you sit here and read it</p> <p>23 into the record.</p> <p>24 MR. MARDEROSIAN: I will</p> <p>25 absolutely read Kelsey Dewald's</p>	<p style="text-align: right;">Page 125</p> <p>1 KOHN</p> <p>2 because you're controlling the</p> <p>3 payment pathway that leads to</p> <p>4 payment to a composer. You're</p> <p>5 controlling the metadata. And</p> <p>6 guess what, the results are on all</p> <p>7 the cue sheets, what cue sheets</p> <p>8 were filed. Not even talking</p> <p>9 about all the cue sheets that your</p> <p>10 own extract admits were not filed</p> <p>11 that your client got paid for that</p> <p>12 my client did not.</p> <p>13 MR. ZAKARIN: You haven't</p> <p>14 proved a thing you keep saying the</p> <p>15 same thing.</p> <p>16 MR. MARDEROSIAN: You</p> <p>17 produced the documents.</p> <p>18 MR. ZAKARIN: You're right.</p> <p>19 Go through it. You haven't asked</p> <p>20 a question about it.</p> <p>21 MR. MARDEROSIAN: When you</p> <p>22 argue that this is speculation, I</p> <p>23 must respond this way because you</p> <p>24 seem -- you have a habit of</p> <p>25 ignoring the adverse evidence in</p>

<p style="text-align: right;">Page 126</p> <p>1 KOHN</p> <p>2 the case. And that's okay, Don.</p> <p>3 I'm okay with that because I don't</p> <p>4 really care. But don't do it on</p> <p>5 the record and argue with the</p> <p>6 expert witness that he's</p> <p>7 speculating.</p> <p>8 Kelsey Dewald testified out</p> <p>9 of Santa Monica the metadata was</p> <p>10 changed all the time. You know</p> <p>11 what it was changed? Because he's</p> <p>12 manipulating the composer names to</p> <p>13 use the composer catalogs that he</p> <p>14 controls.</p> <p>15 MR. ZAKARIN: Mick, you make</p> <p>16 stuff up on the record and you</p> <p>17 think that that's --</p> <p>18 MR. MARDEROSIAN: I'm not</p> <p>19 making it up.</p> <p>20 MR. ZAKARIN: Don't talk when</p> <p>21 I'm talking. I listened to you</p> <p>22 patiently again. It's very</p> <p>23 difficult, but I did listen to you</p> <p>24 patiently. Now, you also have to</p> <p>25 listen to me. I'll be very brief.</p>	<p style="text-align: right;">Page 128</p> <p>1 KOHN</p> <p>2 MR. ZAKARIN: You have no</p> <p>3 clue what that is and neither do</p> <p>4 your clients --</p> <p>5 MR. MARDEROSIAN: Here's the</p> <p>6 semiannual reports. The money's</p> <p>7 going through ASCAP. You're</p> <p>8 reporting to Viacom that the money</p> <p>9 is flowing through ASCAP, Don.</p> <p>10 MR. ZAKARIN: You have no --</p> <p>11 MR. MARDEROSIAN: I'm sorry,</p> <p>12 Don. But the evidence -- the</p> <p>13 evidence is over. It's over.</p> <p>14 MR. ZAKARIN: So is this case</p> <p>15 shortly.</p> <p>16 MR. MARDEROSIAN: And you're</p> <p>17 going to see more during the</p> <p>18 summary judgment as well. More --</p> <p>19 when I make the summary judgment.</p> <p>20 MR. ZAKARIN: Please do,</p> <p>21 Mick.</p> <p>22 MR. MARDEROSIAN: I'm going</p> <p>23 to do that.</p> <p>24 MR. ZAKARIN: You think</p> <p>25 you're threatening me?</p>
<p style="text-align: right;">Page 127</p> <p>1 KOHN</p> <p>2 You constantly rhetorically</p> <p>3 in lieu of evidence make stuff up.</p> <p>4 And you splay it all across the</p> <p>5 record. And it's not evidence.</p> <p>6 It's not anything but something</p> <p>7 that you find comforting.</p> <p>8 MR. MARDEROSIAN: Here's your</p> <p>9 extract --</p> <p>10 MR. ZAKARIN: I know all</p> <p>11 about it.</p> <p>12 MR. MARDEROSIAN: -- money's</p> <p>13 flowing through ASCAP.</p> <p>14 MR. ZAKARIN: You don't know</p> <p>15 what it is.</p> <p>16 MR. MARDEROSIAN: You</p> <p>17 produced it yourself.</p> <p>18 MR. ZAKARIN: You have you</p> <p>19 no --</p> <p>20 MR. MARDEROSIAN: You've</p> <p>21 admitted to that money flows</p> <p>22 through ASCAP.</p> <p>23 MR. ZAKARIN: You have no --</p> <p>24 MR. MARDEROSIAN: Why is</p> <p>25 that, Don?</p>	<p style="text-align: right;">Page 129</p> <p>1 KOHN</p> <p>2 MR. MARDEROSIAN: I'm not</p> <p>3 threatening you. You have</p> <p>4 threatened me with the summary</p> <p>5 judgment for months.</p> <p>6 But, Don, guess what, I --</p> <p>7 this evidence in this case is</p> <p>8 overwhelming. And when I get that</p> <p>9 decision on the summary judgment,</p> <p>10 it's going to be in the media.</p> <p>11 I'm going to tell you right now</p> <p>12 because this is nothing short of</p> <p>13 theft. This is illegal activity.</p> <p>14 MR. ZAKARIN: The only thing</p> <p>15 illegal is --</p> <p>16 MR. MARDEROSIAN: And it's</p> <p>17 not going to end. I'm going to</p> <p>18 tell you it's not going to end.</p> <p>19 MR. ZAKARIN: The only</p> <p>20 thing --</p> <p>21 MR. MARDEROSIAN: There are</p> <p>22 people lining up. I'll tell you</p> <p>23 that right now.</p> <p>24 MR. HWANG: I'm going to</p> <p>25 state something for the record.</p>

<p style="text-align: right;">Page 130</p> <p>1 KOHN</p> <p>2 I'm going to go as long as I need</p> <p>3 to with Mr. Kohn.</p> <p>4 MR. MARDEROSIAN: Do whatever</p> <p>5 you need to do.</p> <p>6 MR. HWANG: However late into</p> <p>7 the night --</p> <p>8 MR. MARDEROSIAN: You</p> <p>9 don't --</p> <p>10 MR. HWANG: -- into tomorrow.</p> <p>11 COURT REPORTER: Wait. One</p> <p>12 at a time.</p> <p>13 MR. MARDEROSIAN: Your</p> <p>14 threats count nothing to me, Wook.</p> <p>15 You complain about being a lawyer</p> <p>16 all the time. I could care</p> <p>17 less --</p> <p>18 MR. ZAKARIN: Please.</p> <p>19 MR. MARDEROSIAN: -- how long</p> <p>20 we have to stay here.</p> <p>21 MR. ZAKARIN: Okay. Mick,</p> <p>22 you're wasting my time. You're</p> <p>23 wasting everybody's time.</p> <p>24 MR. MARDEROSIAN: Ask a</p> <p>25 question then.</p>	<p style="text-align: right;">Page 132</p> <p>1 KOHN</p> <p>2 Picklet moment.</p> <p>3 MS. COHEN: Don't do that,</p> <p>4 Wook. Don't do that.</p> <p>5 MR. HWANG: I'm going to make</p> <p>6 a statement for the record</p> <p>7 whenever Mr. Marderosian breathes</p> <p>8 and I can make a statement without</p> <p>9 interruption.</p> <p>10 Is that okay?</p> <p>11 MR. ZAKARIN: Don't ask --</p> <p>12 MR. MARDEROSIAN: Is what</p> <p>13 okay?</p> <p>14 MR. HWANG: Can I make a</p> <p>15 statement without interruption</p> <p>16 right now?</p> <p>17 MR. MARDEROSIAN: You don't</p> <p>18 have to ask for my permission</p> <p>19 about anything. You're a lawyer</p> <p>20 that complains about work. I have</p> <p>21 no respect for that. Zero.</p> <p>22 MR. HWANG: Can I make a</p> <p>23 statement now?</p> <p>24 I'm going to go as long as I</p> <p>25 need to with Mr. Kohn into the</p>
<p style="text-align: right;">Page 131</p> <p>1 KOHN</p> <p>2 MR. ZAKARIN: You wouldn't</p> <p>3 know how to ask a question if your</p> <p>4 life depended on it.</p> <p>5 MR. MARDEROSIAN: Don, you</p> <p>6 opened the door by arguing with</p> <p>7 the witness that it's speculation.</p> <p>8 If you don't do that, you won't</p> <p>9 have to encounter any of this.</p> <p>10 Act appropriately as a</p> <p>11 experienced lawyer in asking</p> <p>12 questions and eliciting answers</p> <p>13 based on this expert's opinion,</p> <p>14 just like I did yesterday.</p> <p>15 MR. ZAKARIN: You did what?</p> <p>16 MR. MARDEROSIAN: Just like I</p> <p>17 did yesterday.</p> <p>18 MR. ZAKARIN: What is --</p> <p>19 MR. MARDEROSIAN: In spite of</p> <p>20 all of your interference, I got</p> <p>21 all I needed to get out of your</p> <p>22 own experts because you didn't</p> <p>23 prepare them correctly.</p> <p>24 MR. ZAKARIN: I feel like</p> <p>25 I've walked into a Mr. Mick's</p>	<p style="text-align: right;">Page 133</p> <p>1 KOHN</p> <p>2 evening, into tomorrow.</p> <p>3 So to the extent that</p> <p>4 precludes any testimony you need</p> <p>5 to take from Mr. --</p> <p>6 MR. MARDEROSIAN: You're not</p> <p>7 going into tomorrow.</p> <p>8 MR. HWANG: Absolutely --</p> <p>9 MR. MARDEROSIAN: That's not</p> <p>10 what the --</p> <p>11 MR. HWANG: -- I'm going into</p> <p>12 tomorrow.</p> <p>13 MR. MARDEROSIAN: No, you're</p> <p>14 not.</p> <p>15 MR. HWANG: Absolutely. I'm</p> <p>16 going to get --</p> <p>17 MR. MARDEROSIAN: You get --</p> <p>18 COURT REPORTER: Gentlemen,</p> <p>19 one at a time, please.</p> <p>20 MR. MARDEROSIAN: It's going</p> <p>21 to be until we're done.</p> <p>22 MR. HWANG: I'm going as long</p> <p>23 as I need to with Mr. Kohn.</p> <p>24 MR. MARDEROSIAN: Yeah.</p> <p>25 MR. ZAKARIN: You don't even</p>

<p style="text-align: right;">Page 154</p> <p>1 KOHN</p> <p>2 A I'm trying to think back to</p> <p>3 the names. I think it's Quello and</p> <p>4 Ernesto -- no, Jose -- I'm thinking of</p> <p>5 something else. Cuervo.</p> <p>6 Okay. It's just a vague</p> <p>7 recollection that I have.</p> <p>8 Q You have a vague recollection</p> <p>9 that there's deposition testimony to</p> <p>10 the effect that there was no such</p> <p>11 online system, so that it got dealt</p> <p>12 with in the 2011 agreement through the</p> <p>13 specific registration requirement?</p> <p>14 A Yes.</p> <p>15 Q If I understand the thrust of</p> <p>16 what you're saying then, and please</p> <p>17 correct me if I'm wrong, it's that, in</p> <p>18 fact, there was no specific</p> <p>19 registration provision in the 2010</p> <p>20 agreement, there was this cue sheet</p> <p>21 preparation provision --</p> <p>22 A Right.</p> <p>23 Q -- and then it got corrected</p> <p>24 or addressed in the 2011 agreement in</p> <p>25 Paragraph 4.8 that we just read?</p>	<p style="text-align: right;">Page 156</p> <p>1 KOHN</p> <p>2 It is an incomplete</p> <p>3 hypothetical. It's vague and</p> <p>4 overbroad.</p> <p>5 Q You can answer the question.</p> <p>6 A I disagree with the expert</p> <p>7 reports provided by the defendant in</p> <p>8 the case who the experts in which -- in</p> <p>9 which the experts took the position</p> <p>10 that there's no custom and practice in</p> <p>11 the music publishing or music</p> <p>12 production library business of not</p> <p>13 correcting cue sheets.</p> <p>14 I do believe that there is a</p> <p>15 custom and practice of correcting cue</p> <p>16 sheets, especially when the cue sheet</p> <p>17 missed information, missed corrections</p> <p>18 and manipulated incorrectly through</p> <p>19 metadata, however we want to discuss</p> <p>20 that in terms of before, was caused by</p> <p>21 the music publisher. So I -- if there</p> <p>22 is -- if the composer's name is wrong,</p> <p>23 there's a likelihood that the money is</p> <p>24 going to not be paid or be misdirected</p> <p>25 to someone other than the songwriter.</p>
<p style="text-align: right;">Page 155</p> <p>1 KOHN</p> <p>2 A Right.</p> <p>3 Q Thank you.</p> <p>4 I just wanted to understand</p> <p>5 what you were saying.</p> <p>6 MR. MARDEROSIAN: I think the</p> <p>7 witnesses he was referring to is</p> <p>8 Jose Quello, Q-U-E-L-L-O, and</p> <p>9 Ernesto Elias.</p> <p>10 MR. ZAKARIN: I can't swear</p> <p>11 you, but it doesn't matter. It</p> <p>12 either was testified to, or it</p> <p>13 wasn't. We know who they are.</p> <p>14 It's the Viacom witnesses.</p> <p>15 A Thank you.</p> <p>16 Q Again in Exhibit 3, if you</p> <p>17 would, and other than whether there is</p> <p>18 an implied obligation or not, can you</p> <p>19 tell me any provision in the 2011</p> <p>20 contract which required Viacom to check</p> <p>21 any cue sheets that were filed with</p> <p>22 BMI?</p> <p>23 MR. MARDEROSIAN: I'm just</p> <p>24 going to object. Calls for a</p> <p>25 legal opinion and conclusion.</p>	<p style="text-align: right;">Page 157</p> <p>1 KOHN</p> <p>2 And it's as between the</p> <p>3 songwriter and the publisher. It is</p> <p>4 not the songwriter's responsibility to</p> <p>5 do it. It's the -- to administer these</p> <p>6 properly, the cue sheets, but it's the</p> <p>7 music publisher's responsibility. So</p> <p>8 if a major source of the income of the</p> <p>9 songwriter under the bargain that has</p> <p>10 been entered into under both the 2010</p> <p>11 agreement and the 2011 agreement is for</p> <p>12 them to get their performance royalties</p> <p>13 from BMI, those cue sheets have to be</p> <p>14 entered correctly and they have to have</p> <p>15 their composer's name on it, not</p> <p>16 something like Mix Tape or something</p> <p>17 else.</p> <p>18 So it is the responsibility</p> <p>19 of the publisher to perform those</p> <p>20 administrative duties so that the</p> <p>21 songwriter gets the benefit of the</p> <p>22 bargain.</p> <p>23 Q We're going to deal with the</p> <p>24 custom and practice pretty much right</p> <p>25 now that you just said exists. But</p>

<p style="text-align: right;">Page 158</p> <p>1 KOHN</p> <p>2 that wasn't my question.</p> <p>3 My question was simply, other</p> <p>4 than there, you know, being some</p> <p>5 implied obligation or you say there's</p> <p>6 custom and practice, is there any</p> <p>7 provision in the agreement that</p> <p>8 requires Viacom to check the cue sheets</p> <p>9 for accuracy? That's my question.</p> <p>10 MR. MARDEROSIAN: I'm going</p> <p>11 to object. It's been asked and</p> <p>12 answered.</p> <p>13 It calls for a legal opinion</p> <p>14 and conclusion.</p> <p>15 The document speaks for</p> <p>16 itself, and it is an incomplete</p> <p>17 hypothetical and inconsistent with</p> <p>18 the facts of this case.</p> <p>19 Q You can now answer the</p> <p>20 question.</p> <p>21 A Okay. I am satisfied with my</p> <p>22 previous answer, and the document</p> <p>23 speaks for itself.</p> <p>24 Q Well, I'm not satisfied; but</p> <p>25 you're satisfied. So I will move on.</p>	<p style="text-align: right;">Page 160</p> <p>1 KOHN</p> <p>2 any industry --</p> <p>3 Q Yeah.</p> <p>4 A -- is what is typically done</p> <p>5 in connection with performing one's</p> <p>6 obligations under contracts or</p> <p>7 performing one's obligations to</p> <p>8 maximize the revenues or minimize the</p> <p>9 costs for the business in question.</p> <p>10 Q So custom and practice is</p> <p>11 something that in an industry is</p> <p>12 typically done by most companies in an</p> <p>13 industry; is that right?</p> <p>14 MR. MARDEROSIAN: I'm just</p> <p>15 going to object. It misstates the</p> <p>16 testimony. It's vague and</p> <p>17 ambiguous.</p> <p>18 Q You can answer.</p> <p>19 A I would say that custom and</p> <p>20 practice is performed by companies in</p> <p>21 the industry who conform to their</p> <p>22 obligations to fulfill the terms of the</p> <p>23 contract, the bargains they've made and</p> <p>24 their implied obligations of good faith</p> <p>25 and fair dealing with those they</p>
<p style="text-align: right;">Page 159</p> <p>1 KOHN</p> <p>2 Now, Mr. Kohn, in defining</p> <p>3 custom and practice in an industry, I</p> <p>4 want to understand how you define</p> <p>5 custom and practice. Does it mean that</p> <p>6 a custom and practice is something that</p> <p>7 some company in the industry does</p> <p>8 sometimes, or is it something that all</p> <p>9 companies in the industry invariably do</p> <p>10 as a matter of consistent practice?</p> <p>11 MR. MARDEROSIAN: Object to</p> <p>12 the question as it's vague and</p> <p>13 overbroad.</p> <p>14 It's an incomplete</p> <p>15 hypothetical, and it calls for a</p> <p>16 legal conclusion.</p> <p>17 MR. ZAKARIN: Let me do it</p> <p>18 differently.</p> <p>19 Q Tell me what your definition</p> <p>20 is of custom and practice.</p> <p>21 MR. MARDEROSIAN: In what</p> <p>22 regard to what topic?</p> <p>23 I object. It's vague.</p> <p>24 Q You can answer the question.</p> <p>25 A Well, custom and practice in</p>	<p style="text-align: right;">Page 161</p> <p>1 KOHN</p> <p>2 contract with.</p> <p>3 Q So isn't that a circular</p> <p>4 definition, which is, custom and</p> <p>5 practice is only that which the</p> <p>6 companies do who are properly doing</p> <p>7 something as opposed to everybody else?</p> <p>8 MR. MARDEROSIAN: I'm going</p> <p>9 to object to the question.</p> <p>10 Q Isn't that a circular</p> <p>11 definition?</p> <p>12 MR. MARDEROSIAN: The</p> <p>13 question is argumentative. It's</p> <p>14 vague and overbroad.</p> <p>15 A It's not a circular</p> <p>16 definition. It's a definition to a</p> <p>17 term which you've even tried to</p> <p>18 characterize in such abstract means. I</p> <p>19 think the discussion is better had in</p> <p>20 determining whether some particular</p> <p>21 activity is a custom and practice in</p> <p>22 the industry or not.</p> <p>23 Q So you've given me your</p> <p>24 definition. Your definition is that</p> <p>25 it's a -- custom and practice is</p>



<p style="text-align: right;">Page 162</p> <p>1 KOHN</p> <p>2 something that's typically performed by</p> <p>3 companies in the industry who conform</p> <p>4 to their obligations to fulfill the</p> <p>5 terms of the contract had the bargains</p> <p>6 they've made in their implied</p> <p>7 obligations, good faith and fair</p> <p>8 dealings with those they contracted</p> <p>9 were, I guess, performed; is that</p> <p>10 right?</p> <p>11 A I'm not sure that's a</p> <p>12 precise --</p> <p>13 Q I read --</p> <p>14 A I know what you read.</p> <p>15 Q Okay.</p> <p>16 A But what you read doesn't</p> <p>17 sound like what I said.</p> <p>18 Q Well, then would you</p> <p>19 please --</p> <p>20 A So it might not have been</p> <p>21 transcribed properly.</p> <p>22 Q Could you please say it again</p> <p>23 so we make -- so we know?</p> <p>24 A I don't want to say two</p> <p>25 things different.</p>	<p style="text-align: right;">Page 164</p> <p>1 KOHN</p> <p>2 MR. ZAKARIN: I did.</p> <p>3 MR. MARDEROSIAN: We don't</p> <p>4 need reactions like that.</p> <p>5 MR. ZAKARIN: Mick, you don't</p> <p>6 lecture my colleagues, please.</p> <p>7 MR. MARDEROSIAN: I'm -- I'm</p> <p>8 not lecturing him as your</p> <p>9 colleague. I'm lecturing him as</p> <p>10 an opponent --</p> <p>11 MR. ZAKARIN: Okay.</p> <p>12 MR. MARDEROSIAN: -- in the</p> <p>13 room.</p> <p>14 MR. ZAKARIN: You can lecture</p> <p>15 me.</p> <p>16 MR. MARDEROSIAN: Don, just</p> <p>17 let it -- just let it go.</p> <p>18 BY MR. ZAKARIN:</p> <p>19 Q Let's -- if it's improperly</p> <p>20 or incorrectly transcribed in any way,</p> <p>21 I want to have this clear on the</p> <p>22 record.</p> <p>23 MR. MARDEROSIAN: Make fun of</p> <p>24 us all you want. There's going to</p> <p>25 come --</p>
<p style="text-align: right;">Page 163</p> <p>1 KOHN</p> <p>2 MR. MARDEROSIAN: Let's --</p> <p>3 Ross, don't do that. Hold on.</p> <p>4 Let's just wait. There's too many</p> <p>5 eye rollings and too many -- you</p> <p>6 have to stop doing that. It's not</p> <p>7 professional and I'm not going to</p> <p>8 sit here I'm going to tell you,</p> <p>9 and experience that anymore.</p> <p>10 MR. ZAKARIN: He's not</p> <p>11 rolling his eyes.</p> <p>12 MR. MARDEROSIAN: Yes, he is.</p> <p>13 And Heather has seen it and others</p> <p>14 have seen it, and it's being done.</p> <p>15 And it's not professional.</p> <p>16 Let all come to an agreement</p> <p>17 not to do that, either side.</p> <p>18 Either side. Ask your</p> <p>19 questions --</p> <p>20 MR. ZAKARIN: I did.</p> <p>21 MR. MARDEROSIAN: -- just get</p> <p>22 the responses.</p> <p>23 MR. ZAKARIN: I did.</p> <p>24 MR. MARDEROSIAN: We don't</p> <p>25 need reaction.</p>	<p style="text-align: right;">Page 165</p> <p>1 KOHN</p> <p>2 MR. ZAKARIN: Mick --</p> <p>3 MR. MARDEROSIAN: -- a day,</p> <p>4 Ross, you're not going to be</p> <p>5 making fun of us. I'm going to</p> <p>6 tell you right now --</p> <p>7 MR. ZAKARIN: Mick, I'm</p> <p>8 trying to --</p> <p>9 MR. MARDEROSIAN: -- so just</p> <p>10 stop it.</p> <p>11 MR. ZAKARIN: Mick, can I</p> <p>12 please go forward with this</p> <p>13 deposition?</p> <p>14 MR. MARDEROSIAN: Yes. I --</p> <p>15 I really would appreciate that.</p> <p>16 MR. ZAKARIN: I'm trying.</p> <p>17 Trust me. I am.</p> <p>18 MR. MARDEROSIAN: I know you</p> <p>19 are.</p> <p>20 Q Let's go through your</p> <p>21 definition of custom and practice</p> <p>22 against, sir, because it's important to</p> <p>23 have on the record.</p> <p>24 MR. MARDEROSIAN: Just -- I'm</p> <p>25 going to object. It's been asked</p>

<p style="text-align: right;">Page 170</p> <p>1 KOHN</p> <p>2 now told us. So we can move on.</p> <p>3 MR. MARDEROSIAN: Just for</p> <p>4 the record, I'm going to --</p> <p>5 A And --</p> <p>6 MR. MARDEROSIAN: -- excuse</p> <p>7 me -- I'm going to object. That</p> <p>8 was a misstate of what he said.</p> <p>9 And it's vague and ambiguous.</p> <p>10 A Typically done --</p> <p>11 MR. ZAKARIN: Okay. The</p> <p>12 record will reflect it.</p> <p>13 A You didn't finish what I had</p> <p>14 said. But it's typically done in</p> <p>15 compliance -- I might have said</p> <p>16 earlier, in conformance, but I may have</p> <p>17 misspoke -- but in compliance with</p> <p>18 obligations that you have both express</p> <p>19 obligations and implied obligations</p> <p>20 with respect to those people that you</p> <p>21 are contractually dealing with in the</p> <p>22 industry. Or to perform your duties</p> <p>23 correctly for the sake of the company</p> <p>24 that you're working for or for those</p> <p>25 whom you're working for, such as</p>	<p style="text-align: right;">Page 172</p> <p>1 KOHN</p> <p>2 And then you say going down,</p> <p>3 the last bullet point, it is the custom</p> <p>4 and practice of music publishers to</p> <p>5 review cue sheets for accuracy and</p> <p>6 correct any mistakes. This is true of</p> <p>7 even publishers who consider themselves</p> <p>8 to be music production libraries.</p> <p>9 Those are your statements in</p> <p>10 your report. And when you refer to</p> <p>11 custom and practice there, is that the</p> <p>12 custom and practice as you've just</p> <p>13 previously defined it?</p> <p>14 A I don't understand the</p> <p>15 question. Say that again.</p> <p>16 Q You've said -- you used the</p> <p>17 term "custom and practice." Is that --</p> <p>18 is your use of the term "custom and</p> <p>19 practice" there consistent with the</p> <p>20 definition that you gave me just a few</p> <p>21 minutes ago, or is it anything</p> <p>22 different?</p> <p>23 A I think it is. I think it</p> <p>24 is.</p> <p>25 Q It is consistent?</p>
<p style="text-align: right;">Page 171</p> <p>1 KOHN</p> <p>2 shareholders or employees or</p> <p>3 songwriters and other third parties you</p> <p>4 may be contracting with.</p> <p>5 Q On Page 10 -- turn to Page 10</p> <p>6 of your report if you would. I'm going</p> <p>7 to read you a couple of things that you</p> <p>8 said on the same topic.</p> <p>9 Top of the page you say, it</p> <p>10 has long been the responsibility of the</p> <p>11 songwriter's music publisher to monitor</p> <p>12 the cue sheets, submit it to the DROs</p> <p>13 and with the advent of cable television</p> <p>14 and the platform it has provided to</p> <p>15 independent television producers, the</p> <p>16 responsibility for reviewing cue sheets</p> <p>17 for accuracy has now become a routine</p> <p>18 part of a music publisher's basic</p> <p>19 responsibilities.</p> <p>20 You then go on and say in the</p> <p>21 next bullet point, as between the music</p> <p>22 publisher, the PRO and the songwriter,</p> <p>23 the publisher bears responsibility for</p> <p>24 making sure the cue sheets are filed</p> <p>25 with the proper PRO and are accurate.</p>	<p style="text-align: right;">Page 173</p> <p>1 KOHN</p> <p>2 A It would -- it sounds</p> <p>3 consistent.</p> <p>4 Q Now, what I want to</p> <p>5 understand is the factual basis for</p> <p>6 your statement. Let's -- these are a</p> <p>7 couple of statements. Let's deal with</p> <p>8 the last one.</p> <p>9 It is the custom and practice</p> <p>10 of music publishers to review cue</p> <p>11 sheets for accuracy and correct any</p> <p>12 mistakes. This is true of even</p> <p>13 publishers who consider themselves to</p> <p>14 be production music libraries.</p> <p>15 What's the factual basis for</p> <p>16 your statement of that being the custom</p> <p>17 and practice?</p> <p>18 A The -- in terms of production</p> <p>19 music libraries, I actually didn't</p> <p>20 mention earlier that I meant to do, but</p> <p>21 I -- I first learned the word -- what</p> <p>22 the word "cue sheet" was when sitting</p> <p>23 with my uncle who actually had a stack</p> <p>24 of them and he explained to me what</p> <p>25 they were. And he was -- he was</p>

<p style="text-align: right;">Page 174</p> <p>1 KOHN</p> <p>2 reviewing them.</p> <p>3 I don't have any specific</p> <p>4 recollection of what they -- where they</p> <p>5 were from and where they got them. It</p> <p>6 was actually paper that he got. It</p> <p>7 would have -- back in the '80s. Then</p> <p>8 maybe ASCAP would have sent it to him.</p> <p>9 But if he didn't make sure that the cue</p> <p>10 sheets were filed properly with ASCAP,</p> <p>11 he wouldn't have gotten the performance</p> <p>12 money on the back end, which is what he</p> <p>13 was explaining to me. Because he</p> <p>14 talked -- he told me what a needle drop</p> <p>15 was. That he might charge \$200 for a</p> <p>16 needle drop. And I go that doesn't</p> <p>17 sound like a lot of money. How do you</p> <p>18 make money on this? And he says I get</p> <p>19 it all in the back end. And that</p> <p>20 morning he had a stack of cue sheets,</p> <p>21 whatever. And I didn't quite fully</p> <p>22 understand it at the time. Maybe over</p> <p>23 the years I got a better understanding</p> <p>24 of that.</p> <p>25 Q Who else --</p>	<p style="text-align: right;">Page 176</p> <p>1 KOHN</p> <p>2 Q That's not what he said.</p> <p>3 A Yes, he did.</p> <p>4 Q Okay.</p> <p>5 A He said -- that's the job of</p> <p>6 --</p> <p>7 Q Whatever it says, it says.</p> <p>8 A That's the job -- that's the</p> <p>9 job of commercial publishers. The CEO</p> <p>10 of Extreme said it himself. So one of</p> <p>11 the basis of my customs and practices</p> <p>12 is your own CEO saying in his</p> <p>13 deposition that Sony ATV does it.</p> <p>14 Dan Pounder in his</p> <p>15 declaration said that we don't have the</p> <p>16 resources to do it like Sony ATV does.</p> <p>17 I read that. Okay?</p> <p>18 So why don't you ask your own</p> <p>19 client why they don't follow the</p> <p>20 customs and practices of the industry</p> <p>21 that their own parent company follows</p> <p>22 as well. They say -- they chose not to</p> <p>23 do it because they say they don't have</p> <p>24 the resources. If they --</p> <p>25 Q I'm sorry. I didn't want to</p>
<p style="text-align: right;">Page 175</p> <p>1 KOHN</p> <p>2 A Now --</p> <p>3 Q I'm sorry. I didn't want to</p> <p>4 interrupt you.</p> <p>5 A Just so it is on the -- as I</p> <p>6 mentioned in the third bullet on the</p> <p>7 this page, according to BMI without cue</p> <p>8 sheets, it would be nearly impossible</p> <p>9 for such composers and publishers to be</p> <p>10 compensated for their work. The ASCAP</p> <p>11 website says the same thing and</p> <p>12 actually uses the term "production</p> <p>13 music libraries" in the sentence.</p> <p>14 COURT REPORTER: Uses the</p> <p>15 term?</p> <p>16 A Production music libraries in</p> <p>17 the sentence.</p> <p>18 Q Okay.</p> <p>19 A So the ASCAP website says it.</p> <p>20 The BMI website says it. Your client,</p> <p>21 the CEO of Extreme in his deposition</p> <p>22 said that's not something we do, they</p> <p>23 do that over at Sony ATV.</p> <p>24 Q Huh-uh.</p> <p>25 A Yes, he did.</p>	<p style="text-align: right;">Page 177</p> <p>1 KOHN</p> <p>2 interrupt you.</p> <p>3 A So the basis -- I've been to</p> <p>4 panels. I have discussed this with</p> <p>5 people in the industry over the past 35</p> <p>6 years since writing the book about how</p> <p>7 to make sure -- the whole book is Kohn</p> <p>8 on Music Licensing, there's a theme in</p> <p>9 the book is that you shouldn't be --</p> <p>10 that you should be willing to license</p> <p>11 your music out there so that you get</p> <p>12 the back end public performance</p> <p>13 royalties. Everyone knows. It's plain</p> <p>14 as sight. It's on the ABMI and ASCAP</p> <p>15 websites. You can't be a production</p> <p>16 music library or a music publisher and</p> <p>17 miss it, that if you don't have cue</p> <p>18 sheets on file, you're not going to be</p> <p>19 getting the largest piece of the income</p> <p>20 that music publishers make.</p> <p>21 So for your client to say</p> <p>22 bizarrely to me, bizarrely to the</p> <p>23 court, bizarrely to the songwriters</p> <p>24 that they represent that they don't</p> <p>25 have any responsibility, and for you to</p>



<p style="text-align: right;">Page 178</p> <p>1 KOHN</p> <p>2 bring in expert witnesses who dare --</p> <p>3 the head of APM, okay, filed an expert</p> <p>4 report in this case. He's a production</p> <p>5 music library, and he denies any</p> <p>6 responsibility.</p> <p>7 Of course he's going to come</p> <p>8 in -- you brought in an expert who's</p> <p>9 the CEO of a production music library</p> <p>10 to tell you what -- the practices in</p> <p>11 the industry. Of course he's going to</p> <p>12 say that we don't do it. That's not</p> <p>13 the practice, because he doesn't want</p> <p>14 to do the work.</p> <p>15 You have -- you have</p> <p>16 yesterday, the expert witness that you</p> <p>17 brought in yesterday that I sat in on</p> <p>18 and, that's Mr. Katz. He was on the</p> <p>19 board of APM. He also acquired a</p> <p>20 production music library called First</p> <p>21 Com. And he sat there brazenly telling</p> <p>22 Mr. Mardosian's [sic] --</p> <p>23 Q Marderosian.</p> <p>24 A -- Marderosian's client that</p> <p>25 they have no responsibility either to</p>	<p style="text-align: right;">Page 180</p> <p>1 KOHN</p> <p>2 interrupt the witness.</p> <p>3 A I am done.</p> <p>4 Q Oh, okay. Well, now we'll go</p> <p>5 back.</p> <p>6 So in addition to your uncle</p> <p>7 who you sat with about 30 years ago and</p> <p>8 he had a stack of cue sheets on his</p> <p>9 desk, what other production music</p> <p>10 libraries have you either talked to or</p> <p>11 found out as a matter of custom and</p> <p>12 practice reviewed cue sheets, any</p> <p>13 others?</p> <p>14 A I don't remember any others.</p> <p>15 I met Adam --</p> <p>16 Q Thank you. That's enough.</p> <p>17 A I --</p> <p>18 MR. MARDEROSIAN: Wait. What</p> <p>19 do you mean that's enough?</p> <p>20 MR. ZAKARIN: No, no, that's</p> <p>21 enough.</p> <p>22 He's answered it. He's</p> <p>23 answered the question.</p> <p>24 MR. MARDEROSIAN: No, he</p> <p>25 hasn't.</p>
<p style="text-align: right;">Page 179</p> <p>1 KOHN</p> <p>2 do it. He's saying it's custom --</p> <p>3 there's no custom and practice in the</p> <p>4 industry.</p> <p>5 If you read books like Todd</p> <p>6 Brabec, who you called a putz the other</p> <p>7 week at a deposition, which was</p> <p>8 appalling and it was insulting to me</p> <p>9 and the people that I know in the music</p> <p>10 industry --</p> <p>11 Q Uh-huh.</p> <p>12 A -- in his book he says that</p> <p>13 it's customs and practice in the music</p> <p>14 industry. You don't have to be around</p> <p>15 much to understand that it is custom</p> <p>16 and practice for production music</p> <p>17 libraries and music publishers as their</p> <p>18 basic responsibility to make sure the</p> <p>19 biggest source of income gets paid to</p> <p>20 the songwriters.</p> <p>21 Q Okay. Are you done?</p> <p>22 MR. MARDEROSIAN: Well,</p> <p>23 that's argumentative.</p> <p>24 MR. ZAKARIN: I just wanted</p> <p>25 to know because I don't want to</p>	<p style="text-align: right;">Page 181</p> <p>1 KOHN</p> <p>2 A No, I didn't say I didn't</p> <p>3 talk to production music libraries. I</p> <p>4 met Adam Taylor a number of years ago.</p> <p>5 I don't -- I talked about his</p> <p>6 production music library. I don't</p> <p>7 remember having discussed with him, but</p> <p>8 I might have discussed with him what he</p> <p>9 does and how he does it. There are</p> <p>10 lots of people -- how do you think I</p> <p>11 wrote Kohn on Music Licensing?</p> <p>12 Virtually every word in that book,</p> <p>13 other than the forms, without having</p> <p>14 discussed with everybody in the music</p> <p>15 industry that I was in touch with</p> <p>16 whether it was my uncle, my father,</p> <p>17 Barry Massarsky sitting at the end of</p> <p>18 the table, other people that I learned</p> <p>19 from, what custom and practice in the</p> <p>20 music industry are? How could I have</p> <p>21 possibly have described terms of art?</p> <p>22 Q Damned if I know.</p> <p>23 A How can I sit here and give</p> <p>24 you answers to your questions on issues</p> <p>25 like Sound Exchange and other things if</p>

<p style="text-align: right;">Page 182</p> <p>1 KOHN</p> <p>2 I didn't talk to a lot of people in the</p> <p>3 music industry to know what a custom</p> <p>4 and practice in the music industry is</p> <p>5 or it isn't?</p> <p>6 How does a federal judge in</p> <p>7 Los Angeles in federal court accept my</p> <p>8 testimony as customs and practice in</p> <p>9 the music industry as to the</p> <p>10 interpretation of the ASCAP contract</p> <p>11 with respect to performances in venues</p> <p>12 across the country?</p> <p>13 Q Are you done? I don't want</p> <p>14 to interrupt you.</p> <p>15 A That's not the -- I was</p> <p>16 obviously done.</p> <p>17 Q I can't tell.</p> <p>18 Now, so we've established</p> <p>19 that you didn't talk to any production</p> <p>20 music companies or find out what they</p> <p>21 do --</p> <p>22 A That's not true.</p> <p>23 Q -- but you talked --</p> <p>24 COURT REPORTER: I'm sorry.</p> <p>25 You didn't talk -- I'm sorry.</p>	<p style="text-align: right;">Page 184</p> <p>1 KOHN</p> <p>2 that I remember specifically.</p> <p>3 How would I be able to write</p> <p>4 about these things in the book without</p> <p>5 having talked to people about what they</p> <p>6 do for a living? And that's what I</p> <p>7 did --</p> <p>8 Q Do you write --</p> <p>9 A -- for over 35 years.</p> <p>10 Q -- do you write in the book</p> <p>11 about the custom and practice of music</p> <p>12 production library companies receiving</p> <p>13 and reviewing cue sheets?</p> <p>14 A No, I do not specifically --</p> <p>15 Q Okay.</p> <p>16 A -- cover in the book cue</p> <p>17 sheets. I can't cover every single</p> <p>18 custom and practice in the music</p> <p>19 industry. Now I will. And in the next</p> <p>20 version of the book, which will be</p> <p>21 coming out next year, is going to be</p> <p>22 talking about this. And I'm going to</p> <p>23 use this as an example of how</p> <p>24 songwriters can be mistreated by their</p> <p>25 publishers, and particularly production</p>
<p style="text-align: right;">Page 183</p> <p>1 KOHN</p> <p>2 Talk to any --</p> <p>3 Q Music production library</p> <p>4 companies --</p> <p>5 COURT REPORTER: Music</p> <p>6 production library companies.</p> <p>7 Q -- to find out what they do</p> <p>8 as a matter of custom and practice?</p> <p>9 A I -- that's not the</p> <p>10 testimony.</p> <p>11 Q Besides your uncle?</p> <p>12 A That's not my testimony.</p> <p>13 That's not my testimony.</p> <p>14 Q It's what --</p> <p>15 A No, it's not my testimony.</p> <p>16 I have talked to production</p> <p>17 music libraries, people who work for --</p> <p>18 Q Who?</p> <p>19 A I even met -- I can't tell</p> <p>20 you the names of the companies. I</p> <p>21 can't tell you the names of the</p> <p>22 companies. I can't tell you the</p> <p>23 individuals involved in those</p> <p>24 companies. I told you I met with Adam</p> <p>25 Taylor. That's one name that came up</p>	<p style="text-align: right;">Page 185</p> <p>1 KOHN</p> <p>2 music libraries not just for not</p> <p>3 reviewing cue sheets but for the</p> <p>4 shenanigans that have been going on in</p> <p>5 this -- this case with your CEO.</p> <p>6 Q I look forward to it. And</p> <p>7 look forward to reading it. I may even</p> <p>8 buy it.</p> <p>9 Now --</p> <p>10 A I would hope you --</p> <p>11 Q -- did you contact --</p> <p>12 A -- copyright.</p> <p>13 Q -- any music publishers to</p> <p>14 find out about whether they engage in</p> <p>15 this custom and practice of receiving</p> <p>16 and reviewing cue sheets? Any music</p> <p>17 publishers, not production music</p> <p>18 libraries, but music publishers? Have</p> <p>19 you gone --</p> <p>20 A I haven't --</p> <p>21 COURT REPORTER: I need a</p> <p>22 full question, please. If you</p> <p>23 wait until he finishes --</p> <p>24 Q Have you contacted -- right.</p> <p>25 Have you contacted any of them to find</p>

<p style="text-align: right;">Page 186</p> <p>1 KOHN</p> <p>2 out?</p> <p>3 A Since I was engaged in this</p> <p>4 case, no.</p> <p>5 Q Did you do a survey of any</p> <p>6 production music libraries or music</p> <p>7 publishers?</p> <p>8 A Since I've been engaged in</p> <p>9 this case, no.</p> <p>10 Q Did you do a survey before</p> <p>11 you were engaged in this case?</p> <p>12 A It depends on what you mean</p> <p>13 by "survey." If it means that --</p> <p>14 Q A survey to find --</p> <p>15 A If it means that --</p> <p>16 Q Let me finish.</p> <p>17 You're asking me. So I'm</p> <p>18 going to tell you.</p> <p>19 A Go ahead.</p> <p>20 Q A survey to determine whether</p> <p>21 it's a custom and practice of music</p> <p>22 publishers to receive and review and</p> <p>23 correct cue sheets.</p> <p>24 A You didn't define survey.</p> <p>25 Try again.</p>	<p style="text-align: right;">Page 188</p> <p>1 KOHN</p> <p>2 used the word "survey." He's</p> <p>3 asking you to define what you mean</p> <p>4 by survey so he can answer your</p> <p>5 question.</p> <p>6 Q Yeah. Did you -- did you</p> <p>7 submit questionnaires to music</p> <p>8 publishers -- you didn't talk to</p> <p>9 them -- but did you submit</p> <p>10 questionnaires or some sort of document</p> <p>11 to music publishers or production music</p> <p>12 libraries to find out if they engaged</p> <p>13 in this custom and practice of</p> <p>14 reviewing --</p> <p>15 A I --</p> <p>16 Q -- receiving, reviewing and</p> <p>17 correcting cue sheets?</p> <p>18 A I submitted questionnaires,</p> <p>19 no more than the expert witnesses that</p> <p>20 you have put forth have submitted</p> <p>21 questionnaires to provide answers to</p> <p>22 their questions.</p> <p>23 Q So the answer is no?</p> <p>24 A That's right.</p> <p>25 Q Okay. That's all we need to</p>
<p style="text-align: right;">Page 187</p> <p>1 KOHN</p> <p>2 Q Do you want to know what a</p> <p>3 survey is?</p> <p>4 A Yes.</p> <p>5 MR. MARDEROSIAN: Okay.</p> <p>6 We're getting conversational</p> <p>7 again.</p> <p>8 MR. ZAKARIN: No, no.</p> <p>9 MR. MARDEROSIAN: Maybe we</p> <p>10 need -- maybe we need another</p> <p>11 break.</p> <p>12 MR. ZAKARIN: No. No break.</p> <p>13 A We don't need a break.</p> <p>14 MR. MARDEROSIAN: Hold on</p> <p>15 everybody. Let's go back to</p> <p>16 questions and answers.</p> <p>17 MR. ZAKARIN: I want to know</p> <p>18 what the witness means by survey.</p> <p>19 That's all.</p> <p>20 MR. MARDEROSIAN: So, Don, he</p> <p>21 told you about what he went</p> <p>22 through in writing his book and</p> <p>23 the people that he talked to.</p> <p>24 MR. ZAKARIN: I heard him.</p> <p>25 MR. MARDEROSIAN: Now, you</p>	<p style="text-align: right;">Page 189</p> <p>1 KOHN</p> <p>2 know.</p> <p>3 Now, on Page 8 -- we're going</p> <p>4 back for a second. You talk about the</p> <p>5 50 percent of gross receipts, correct?</p> <p>6 A I'm sorry? Where do I talk</p> <p>7 about it?</p> <p>8 Q Page 8, you talk about, in</p> <p>9 the second bullet point. It's the</p> <p>10 50 percent of gross receipts. I'm just</p> <p>11 trying to orient you. The obligation</p> <p>12 to pay 50 percent of gross receipts.</p> <p>13 A Correct. Based on Page 8.</p> <p>14 Q Page 8, the second bullet.</p> <p>15 I'm just trying to --</p> <p>16 A Got it.</p> <p>17 Q -- work with -- you know, I'm</p> <p>18 just trying to orient the witness.</p> <p>19 Okay.</p> <p>20 Now, under Exhibit 3, K3, the</p> <p>21 payment of gross receipts is not</p> <p>22 unlimited. There are conditions,</p> <p>23 aren't there?</p> <p>24 MR. MARDEROSIAN: Objection.</p> <p>25 Calls for a legal opinion and</p>

<p style="text-align: right;">Page 366</p> <p>1 KOHN</p> <p>2 first got involved in the case I took a</p> <p>3 look at the TuneSat data and came up</p> <p>4 with about 16,000 unique syncs or</p> <p>5 unique programs that contained those</p> <p>6 musical works that are part of the --</p> <p>7 Q Original broadcasts, you're</p> <p>8 saying?</p> <p>9 A You know, I don't like</p> <p>10 original broadcasts. But you could say</p> <p>11 unique programs that contain the</p> <p>12 musical work that were broadcast,</p> <p>13 right, once. And not including all the</p> <p>14 other broadcasts of the same programs.</p> <p>15 I came up with about 16,000.</p> <p>16 Q Now as I recall the --</p> <p>17 MR. MARDEROSIAN: You were</p> <p>18 done?</p> <p>19 THE WITNESS: Yes.</p> <p>20 Q As I recall Aron and Robert</p> <p>21 said there were about 30,000 to 33,000</p> <p>22 total detections; is that right?</p> <p>23 A That sounds about right.</p> <p>24 Q So -- and of that it's your</p> <p>25 testimony that about half of them were</p>	<p style="text-align: right;">Page 368</p> <p>1 KOHN</p> <p>2 many unique syncs that it was.</p> <p>3 Q So back of the envelope?</p> <p>4 A Back of the envelope would be</p> <p>5 a good way to put it.</p> <p>6 Q Now, did you listen to any of</p> <p>7 the audio clips?</p> <p>8 A Yes, I did.</p> <p>9 Q And were you able to make an</p> <p>10 assessment of how many of the</p> <p>11 detections you identified were promos</p> <p>12 as compared to in-program uses or</p> <p>13 didn't you do that?</p> <p>14 A I did. Well, I didn't -- I</p> <p>15 would have had to have listened to</p> <p>16 16,000 individual, which I didn't do</p> <p>17 because I wasn't asked to do that. And</p> <p>18 it would have taken my time and it</p> <p>19 wouldn't have been worth the effort.</p> <p>20 But I saw there was a good mix. There</p> <p>21 was certain in-program uses of music</p> <p>22 and there were promos being</p> <p>23 advertisements for it. They were a</p> <p>24 good mix of it. I don't think I -- I</p> <p>25 might have looked at a the Land Rover</p>
<p style="text-align: right;">Page 367</p> <p>1 KOHN</p> <p>2 just unique original broadcast?</p> <p>3 A I told you I did a rough</p> <p>4 pivot table which took the data and did</p> <p>5 a rough on that. There is another way</p> <p>6 that I didn't do where you can strip</p> <p>7 out on how it goes on multiple</p> <p>8 networks. Okay? Because as you</p> <p>9 mentioned earlier, you can have a</p> <p>10 particular program on the TuneSat that</p> <p>11 happened to be broadcast on Turner in</p> <p>12 the United States and then broadcasted</p> <p>13 on some German station some time later.</p> <p>14 I didn't go to the length of</p> <p>15 stripping out the multiple networks</p> <p>16 that it could be. But when I looked at</p> <p>17 the data, 67 percent were the United</p> <p>18 States. A program that was on MTV was</p> <p>19 likely to be on MTV. So if I came up</p> <p>20 with 16,000, I'm looking at maybe</p> <p>21 there's 15,000 that I could strip -- if</p> <p>22 I had to strip out some duplicates on</p> <p>23 alternative networks around the world.</p> <p>24 So it was a -- it was a quick</p> <p>25 look at it to give me an idea of how</p>	<p style="text-align: right;">Page 369</p> <p>1 KOHN</p> <p>2 commercial and the Starbucks commercial</p> <p>3 in there. I might have found it. I</p> <p>4 might have listened to it, but I don't</p> <p>5 remember.</p> <p>6 But I poked around it to see</p> <p>7 what was there but I did not do what</p> <p>8 you had asked me. And I did not do a</p> <p>9 calculations as to how much were this</p> <p>10 kind and how much were that kind.</p> <p>11 Q Turn to Exhibit B of your</p> <p>12 report, if you would.</p> <p>13 (Whereupon, a brief recess</p> <p>14 was taken.)</p> <p>15 Q Okay.</p> <p>16 I think when we broke, I had</p> <p>17 asked you to look at your Exhibit B --</p> <p>18 A Yes.</p> <p>19 Q -- to your report. Do you</p> <p>20 recall? Pull it out.</p> <p>21 A Okay. Exhibit B.</p> <p>22 Q And you say these are unique</p> <p>23 TuneSat detections?</p> <p>24 A That's what the title of it</p> <p>25 is.</p>

<p style="text-align: right;">Page 370</p> <p>1 KOHN</p> <p>2 Q Are they unique?</p> <p>3 A Yes. That's my understanding</p> <p>4 of what they are. I didn't produce</p> <p>5 these.</p> <p>6 Q You didn't --</p> <p>7 A No.</p> <p>8 Q -- create this document?</p> <p>9 A No.</p> <p>10 Q So somebody else created it,</p> <p>11 and told you what it was?</p> <p>12 A Well, I was given it by</p> <p>13 attorneys; and I understand that Karen</p> <p>14 Rodriguez had prepared it.</p> <p>15 Q Okay.</p> <p>16 And the total number of</p> <p>17 detections when you add them up are</p> <p>18 about 21, nearly 22,000, correct?</p> <p>19 You've got 6,848 and 15,093.</p> <p>20 A Fifteen plus six, yeah, about</p> <p>21 22,000, something like that.</p> <p>22 Q I said about 22,000 or close</p> <p>23 to 22,000.</p> <p>24 And you multiplied \$200</p> <p>25 against every one of these detections?</p>	<p style="text-align: right;">Page 372</p> <p>1 KOHN</p> <p>2 what unique is.</p> <p>3 Q Do you know how many of these</p> <p>4 detections -- I assume you're going to</p> <p>5 know the answer -- are Viacom</p> <p>6 detections, detections of broadcasts on</p> <p>7 Viacom networks?</p> <p>8 A I could do that.</p> <p>9 Q You could pull it out from</p> <p>10 the list?</p> <p>11 A Right. Like MTV Classic is</p> <p>12 MTV2. MTV -- we can probably pull out</p> <p>13 and add the numbers up.</p> <p>14 Q So we can add up what the</p> <p>15 total number of MTV detections are?</p> <p>16 MR. MARDEROSIAN: Well, he</p> <p>17 said he did not prepare this.</p> <p>18 MR. ZAKARIN: I understand.</p> <p>19 MR. MARDEROSIAN: And I think</p> <p>20 that's a question for Karen</p> <p>21 Rodriguez.</p> <p>22 MR. ZAKARIN: Well, the</p> <p>23 problem is it's attached to his</p> <p>24 report.</p> <p>25 MR. MARDEROSIAN: I think</p>
<p style="text-align: right;">Page 371</p> <p>1 KOHN</p> <p>2 A Yeah.</p> <p>3 Q But you don't know if these</p> <p>4 are unique detections, correct?</p> <p>5 A Well, it says unique</p> <p>6 detections. And I understood them to</p> <p>7 be unique detections. I had previously</p> <p>8 given a back of the envelope done in my</p> <p>9 own way, way back in February when I</p> <p>10 started working on the case and using</p> <p>11 data that went all the way back to 2013</p> <p>12 or something like that. And -- like I</p> <p>13 said. So when I saw these numbers I</p> <p>14 said it's in the realm of -- again, I</p> <p>15 did back of the envelope and I just</p> <p>16 took these as what it was.</p> <p>17 Q But now they've gone up by</p> <p>18 some nearly 7,000 from your number?</p> <p>19 A Apparently.</p> <p>20 Q And you don't know whether</p> <p>21 they are or not unique detections?</p> <p>22 A I'm not the one who generated</p> <p>23 this. So I don't know whether they're</p> <p>24 unique in the way that you and I have</p> <p>25 been talking about my understanding of</p>	<p style="text-align: right;">Page 373</p> <p>1 KOHN</p> <p>2 just to be fair about it, I think</p> <p>3 he relied on it on a specific</p> <p>4 narrow topic in his report, Don.</p> <p>5 And that was the extent of his use</p> <p>6 of this document.</p> <p>7 But you can ask whatever you</p> <p>8 want, but I think these are</p> <p>9 questions for Karen Rodriguez.</p> <p>10 MR. ZAKARIN: Unusually, you</p> <p>11 know, I ask witnesses about their</p> <p>12 reports and other witnesses about</p> <p>13 their reports. And if he relied</p> <p>14 upon somebody else to do something</p> <p>15 and he's basically just, in</p> <p>16 effect, saying what somebody has</p> <p>17 told him, I'm entitled to know</p> <p>18 that. That's all.</p> <p>19 MR. MARDEROSIAN: I get that,</p> <p>20 absolutely. But the operative</p> <p>21 phrase is do something and I'm</p> <p>22 saying you should ask him what it</p> <p>23 is that he used it for.</p> <p>24 MR. ZAKARIN: I know what he</p> <p>25 used it for. It's in his report.</p>



<p style="text-align: right;">Page 374</p> <p>1 KOHN</p> <p>2 Anyway, let's continue on.</p> <p>3 Q In terms of -- so we could</p> <p>4 figure out which are Viacom channels</p> <p>5 and therefore which are Viacom</p> <p>6 detections, correct?</p> <p>7 A Yes, if we knew what Viacom's</p> <p>8 channels are.</p> <p>9 Q For which you applied \$200</p> <p>10 for each and every one of the</p> <p>11 detections, correct?</p> <p>12 A Well, are you just saying the</p> <p>13 same thing for each -- yeah, I used the</p> <p>14 total numbers here and multiplied it by</p> <p>15 \$200.</p> <p>16 Q And in terms of these</p> <p>17 detections, do you know how many are</p> <p>18 not works that were delivered to Viacom</p> <p>19 Extreme but are owned by others</p> <p>20 including the plaintiffs?</p> <p>21 MR. MARDEROSIAN: Objection.</p> <p>22 Vague.</p> <p>23 Q You know that the plaintiffs</p> <p>24 self-published works, right?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 376</p> <p>1 KOHN</p> <p>2 because I want to object to it</p> <p>3 before you agree to it.</p> <p>4 Q -- they have to get backed</p> <p>5 out?</p> <p>6 MR. MARDEROSIAN: I'm going</p> <p>7 to object.</p> <p>8 It's an incomplete</p> <p>9 hypothetical, and it doesn't</p> <p>10 include the fact that there's</p> <p>11 evidence that Extreme is taking</p> <p>12 Aron and Robert's own publishing</p> <p>13 for Lonely Orchard and Brothers</p> <p>14 Heathen.</p> <p>15 Q You can answer my question as</p> <p>16 opposed to the rhetoric there.</p> <p>17 A My understanding is that</p> <p>18 these were unique detections of</p> <p>19 music -- musical work, sound recordings</p> <p>20 that were created by Aron and Rob and</p> <p>21 delivered under the contract.</p> <p>22 Q But in fact you don't know</p> <p>23 whether these were, in fact, delivered</p> <p>24 or are self-published?</p> <p>25 MR. MARDEROSIAN: I'm just</p>
<p style="text-align: right;">Page 375</p> <p>1 KOHN</p> <p>2 Q Do you know how many of these</p> <p>3 detections are of the plaintiffs'</p> <p>4 self-published works?</p> <p>5 A I think -- I didn't generate</p> <p>6 this. So I don't have the underlying</p> <p>7 data that was used to generate this. I</p> <p>8 wouldn't be able to answer any of those</p> <p>9 questions.</p> <p>10 Q You with agree with me though</p> <p>11 that there's no reason to charge or</p> <p>12 make a claim against Extreme or Viacom</p> <p>13 for \$200 per each of the plaintiffs'</p> <p>14 own works?</p> <p>15 A No.</p> <p>16 Q Okay.</p> <p>17 A Absolutely not.</p> <p>18 Q So if the plaintiffs'</p> <p>19 self-published works or works published</p> <p>20 by third parties are among these</p> <p>21 detections --</p> <p>22 A Right.</p> <p>23 Q -- they have --</p> <p>24 MR. MARDEROSIAN: Hold on.</p> <p>25 Let him finish the question</p>	<p style="text-align: right;">Page 377</p> <p>1 KOHN</p> <p>2 going to object.</p> <p>3 It's an incomplete</p> <p>4 hypothetical and vague.</p> <p>5 Q You can answer.</p> <p>6 MR. MARDEROSIAN: And doesn't</p> <p>7 include the issue over whether or</p> <p>8 not Extreme is taking the</p> <p>9 plaintiffs' published --</p> <p>10 self-published songs.</p> <p>11 A And I don't know whether this</p> <p>12 is an underrepresentation and doesn't</p> <p>13 include all of their songs that were</p> <p>14 delivered and used.</p> <p>15 Q So you don't know very much</p> <p>16 at all about this document?</p> <p>17 A That's right.</p> <p>18 Q Essentially, what you did is</p> <p>19 you took the number of detections</p> <p>20 without knowing what they are and</p> <p>21 multiplied each one by 200?</p> <p>22 A And that wasn't the essential</p> <p>23 part of my report. The essential part</p> <p>24 of my report was coming up with the</p> <p>25 \$200 figure. If this wasn't included,</p>

<p style="text-align: right;">Page 378</p> <p>1 KOHN</p> <p>2 it wouldn't have mattered because</p> <p>3 whichever the true number is would be</p> <p>4 multiplied by \$200. If it was --</p> <p>5 instead of 21,000, if it was 16,000, if</p> <p>6 it was 30,000, whatever that number is.</p> <p>7 And I'm sure enough good minds can get</p> <p>8 together and figure out using the</p> <p>9 TuneSat data what the proper number is.</p> <p>10 Q We'll come to the 200 in due</p> <p>11 course.</p> <p>12 In any event, if I understand</p> <p>13 you correctly you -- it's your view</p> <p>14 that the 200 is the right number for --</p> <p>15 for these -- for all of those</p> <p>16 detections, that's your opinion?</p> <p>17 MR. MARDEROSIAN: Right</p> <p>18 number for what?</p> <p>19 Q The right number for the sync</p> <p>20 fee for each of these 200 detections</p> <p>21 that you have opined?</p> <p>22 A My report says what it says</p> <p>23 about the \$200 number. We can turn to</p> <p>24 it. I don't want to say anything</p> <p>25 that's inconsistent and be --</p>	<p style="text-align: right;">Page 380</p> <p>1 KOHN</p> <p>2 to each of these. So your view is, at</p> <p>3 the very least, for the CBS promo use</p> <p>4 200 would be the right number?</p> <p>5 A 200 would be the right number</p> <p>6 to use across the board for the</p> <p>7 detections -- unique detections that</p> <p>8 were discovered during the period from</p> <p>9 mid-2014 to the present.</p> <p>10 Q But one of those is you look</p> <p>11 at CBS promo use and you figure they</p> <p>12 charge 120. I think 200 is the right</p> <p>13 one?</p> <p>14 A Well, there might have been</p> <p>15 an in-program use -- well, I call it an</p> <p>16 in-program use -- that might have been</p> <p>17 worth \$20,000 or worth more. But I</p> <p>18 picked 200 as an overall way of just</p> <p>19 going across the board to simplify it.</p> <p>20 Q Could you look at Exhibit A</p> <p>21 of your report for a second. And we'll</p> <p>22 come back to that.</p> <p>23 A Yes.</p> <p>24 Q Exhibit A, this you have done</p> <p>25 all by yourself?</p>
<p style="text-align: right;">Page 379</p> <p>1 KOHN</p> <p>2 Q Well, let's look at Page 86</p> <p>3 which is where I think come up with</p> <p>4 this.</p> <p>5 A Thank you. Thank you.</p> <p>6 Q Okay.</p> <p>7 A That's helpful.</p> <p>8 Q I think this is where you</p> <p>9 explain how you came up with your \$200.</p> <p>10 A I'm there.</p> <p>11 Q Okay.</p> <p>12 And if I -- I want to</p> <p>13 characterize this correctly, what you</p> <p>14 did was you looked at the license of</p> <p>15 their works to CBS for a promo use for</p> <p>16 \$120, correct?</p> <p>17 A Yes.</p> <p>18 Q And you compared that to an</p> <p>19 in-program license use of one of their</p> <p>20 own works, meaning Rob and Aron, for</p> <p>21 \$300. And you then -- and you</p> <p>22 reference to up to 20,000 for works</p> <p>23 they own control. You mentioned that.</p> <p>24 And then you conclude, I think you just</p> <p>25 say I therefore applied the sum of 200</p>	<p style="text-align: right;">Page 381</p> <p>1 KOHN</p> <p>2 A No.</p> <p>3 Q Who helped with you with this</p> <p>4 one?</p> <p>5 A I had asked Rob and Aron to</p> <p>6 come up with what they think are</p> <p>7 reasonable fees based upon their works.</p> <p>8 I asked them to send me license</p> <p>9 agreements that they had for their own.</p> <p>10 And I took their numbers and validated</p> <p>11 them. I didn't think -- I didn't</p> <p>12 disagree with any of them.</p> <p>13 Q Did you examine the terms of</p> <p>14 those license agreements?</p> <p>15 A Yes.</p> <p>16 Q You don't know whether those</p> <p>17 license agreements were provided to the</p> <p>18 defendants, do you?</p> <p>19 A No.</p> <p>20 Q I was curious about a couple</p> <p>21 of things.</p> <p>22 MR. MARDEROSIAN: Do you know</p> <p>23 if the defendants even asked for</p> <p>24 those?</p> <p>25 THE WITNESS: I don't know.</p>

<p style="text-align: right;">Page 386</p> <p>1 KOHN</p> <p>2 not.</p> <p>3 MR. ZAKARIN: You're not</p> <p>4 testifying, Mick.</p> <p>5 MR. MARDEROSIAN: You're</p> <p>6 mischaracterizing the evidence and</p> <p>7 the document.</p> <p>8 Q Here it's \$10,000 that you</p> <p>9 think is the right amount or at least</p> <p>10 Rob and Aaron figure was the right</p> <p>11 amount and in Exhibit A it's \$200?</p> <p>12 A There's a huge difference</p> <p>13 between CBS and some cable channel --</p> <p>14 Yes channels or some whatever. This is</p> <p>15 CBS. It's a network.</p> <p>16 Q Take a look on Exhibit B, if</p> <p>17 you will. Okay. Exhibit B again.</p> <p>18 Unique TuneSat detections. Okay.</p> <p>19 Do you see CBS is listed</p> <p>20 right there?</p> <p>21 A Okay.</p> <p>22 But so is --</p> <p>23 Q So now you've -- so CBS is</p> <p>24 real different. You're including it.</p> <p>25 A But so is something called</p>	<p style="text-align: right;">Page 388</p> <p>1 KOHN</p> <p>2 talks about needle drops. And</p> <p>3 basically that's about the -- that's</p> <p>4 about the price that you would get,</p> <p>5 \$200.</p> <p>6 Q Okay.</p> <p>7 And so here for the CBS</p> <p>8 promos the appropriate price is not</p> <p>9 \$200 but it's \$10,000 for each promo,</p> <p>10 right? That's your -- that's what</p> <p>11 you've done here?</p> <p>12 A No, but you're taking apples</p> <p>13 and oranges.</p> <p>14 Q Okay.</p> <p>15 That's -- your testimony is</p> <p>16 whatever your testimony is there.</p> <p>17 A Okay. That's my testimony.</p> <p>18 Q Okay.</p> <p>19 A I mean, you're trying to</p> <p>20 suggest that these are the same thing.</p> <p>21 When I take \$200 and do it as an</p> <p>22 average some of them are CBS, which is</p> <p>23 a huge network, and some of them are</p> <p>24 networks you've never heard of. NY9 I</p> <p>25 never heard of. Maybe nobody watched</p>
<p style="text-align: right;">Page 387</p> <p>1 KOHN</p> <p>2 GAC, which I've never even heard of.</p> <p>3 What about the Oxygen channel -- the</p> <p>4 Ovation channel I've never heard of.</p> <p>5 The Hub I've never heard of. Something</p> <p>6 called Showtime East, 1,674. This --</p> <p>7 when I have to apply -- I'm not going</p> <p>8 to go through every single one of</p> <p>9 those. So I gave 200 to CBS, but I</p> <p>10 gave 200 to something called TLC.</p> <p>11 Q And you have no idea what</p> <p>12 they do. You don't even know some of</p> <p>13 those broadcasters, right?</p> <p>14 A I don't -- I -- that's the</p> <p>15 point.</p> <p>16 Q Okay.</p> <p>17 A You know.</p> <p>18 Q So you just arbitrarily</p> <p>19 picked the \$200?</p> <p>20 A I didn't arbitrarily pick it.</p> <p>21 I picked it -- if you're going to</p> <p>22 take -- try to come up with a</p> <p>23 reasonable amount that wasn't 120, that</p> <p>24 wasn't 300, and I thought 200.</p> <p>25 Basically if you look in my book, it</p>	<p style="text-align: right;">Page 389</p> <p>1 KOHN</p> <p>2 the NY9 and got \$200 for the promo for</p> <p>3 it.</p> <p>4 Q Is the \$10,000 that you put</p> <p>5 in there, is that also in your Exhibit</p> <p>6 B? Is it the same use as Exhibit B?</p> <p>7 A I don't know.</p> <p>8 Q So you could have a</p> <p>9 duplication there?</p> <p>10 A I might have a duplication.</p> <p>11 Q You don't know that?</p> <p>12 A Neither do you. I don't know</p> <p>13 whether I do.</p> <p>14 Q Not my burden.</p> <p>15 Did you -- by the way on your</p> <p>16 Exhibit B, did you back out what was</p> <p>17 actually paid on any of those licenses?</p> <p>18 A I was not asked to do that.</p> <p>19 Q Okay.</p> <p>20 So you were just asked to</p> <p>21 come up with a gross number and put</p> <p>22 that forward as the damage claim?</p> <p>23 A I was asked to come up with</p> <p>24 the \$200 amount. All right. I was</p> <p>25 given the unique numbers. I did the</p>



<p style="text-align: right;">Page 390</p> <p>1 KOHN</p> <p>2 multiplication. It was towards the end</p> <p>3 of this. I didn't have the information</p> <p>4 to back it out. And I wasn't provided</p> <p>5 to -- but it. But it could be backed</p> <p>6 out by somebody else.</p> <p>7 Q Lots of things could be done,</p> <p>8 but it wasn't done. So this is put</p> <p>9 forth -- you're aware that you've put</p> <p>10 this forth as a damage claim, \$200</p> <p>11 times 20 -- almost 22,000 detections?</p> <p>12 A Well, I also said to you that</p> <p>13 I'm not the one who came up with the</p> <p>14 22,000 detections. All right?</p> <p>15 Q Is it your testimony --</p> <p>16 A Somebody -- you know,</p> <p>17 somebody else came up with that number</p> <p>18 and I came up with the \$200. I made a</p> <p>19 multiplication of the two numbers. One</p> <p>20 number I came up with. Another number</p> <p>21 somebody else came up with, and that's</p> <p>22 what I put in here.</p> <p>23 Q At the bottom of -- here,</p> <p>24 based on my calculations, Page 86, Aron</p> <p>25 and Rob share of these broadcast</p>	<p style="text-align: right;">Page 392</p> <p>1 KOHN</p> <p>2 role.</p> <p>3 A Yeah. I --</p> <p>4 Q It's in his report.</p> <p>5 A I wasn't asked to back it</p> <p>6 out.</p> <p>7 MR. MARDEROSIAN: Your</p> <p>8 question on this topic is not in</p> <p>9 his report.</p> <p>10 You're mischaracterizing the</p> <p>11 evidence.</p> <p>12 MR. ZAKARIN: Well, we'll</p> <p>13 see.</p> <p>14 Q And you don't know whether</p> <p>15 that 2,194,000 duplicates your other</p> <p>16 number in Exhibit A in any respect, do</p> <p>17 you?</p> <p>18 MR. MARDEROSIAN:</p> <p>19 Mischaracterizes the evidence.</p> <p>20 Vague. Incomplete</p> <p>21 hypothetical.</p> <p>22 A So if we backed out -- how</p> <p>23 many uniques are on Exhibit A? Can we</p> <p>24 count them? Two, four, six, ten, maybe</p> <p>25 30.</p>
<p style="text-align: right;">Page 391</p> <p>1 KOHN</p> <p>2 licensing fees for the 15,093 unique</p> <p>3 audiovisual works, it's really almost</p> <p>4 22,000 --</p> <p>5 A Yeah.</p> <p>6 Q -- in which their music was</p> <p>7 suffixed for the period spanning</p> <p>8 July 1, 2014 to August 1, 2018 is</p> <p>9 \$2,194,100.</p> <p>10 That's put forth as a damage</p> <p>11 claim. Are you aware of that?</p> <p>12 A I'm not familiar with the</p> <p>13 term damage claim as litigators use it.</p> <p>14 So I --</p> <p>15 Q Are you aware that that is</p> <p>16 part of the plaintiffs' claim that they</p> <p>17 have supposedly been deprived of that</p> <p>18 money?</p> <p>19 A Yes.</p> <p>20 Q Okay.</p> <p>21 And you don't know whether</p> <p>22 what they were actually paid is or is</p> <p>23 not backed out of that number?</p> <p>24 MR. MARDEROSIAN: It calls</p> <p>25 for speculation. This is not his</p>	<p style="text-align: right;">Page 393</p> <p>1 KOHN</p> <p>2 Q I'm more interested in your</p> <p>3 number.</p> <p>4 A Let me ask you this: There</p> <p>5 are 30 of them there, right?</p> <p>6 Q Yes.</p> <p>7 A Okay.</p> <p>8 Let's subtract 30 from</p> <p>9 21,000.</p> <p>10 Q Let's subtract 1,975,000 from</p> <p>11 it.</p> <p>12 A No, because these are</p> <p>13 completely different. This is a Land</p> <p>14 Rover commercial for example.</p> <p>15 Q Which is also time barred.</p> <p>16 You're aware of that, aren't you?</p> <p>17 MR. MARDEROSIAN: No, it's</p> <p>18 not time barred because there's an</p> <p>19 e-mail from your client after</p> <p>20 July 1, 2014, offering to pay them</p> <p>21 the money. It's still a claim</p> <p>22 that's on the table. I'm sorry.</p> <p>23 By the admission of your own</p> <p>24 client.</p> <p>25 MR. ZAKARIN: The claim is</p>

<p style="text-align: right;">Page 394</p> <p>1 KOHN</p> <p>2 gone, long gone.</p> <p>3 MR. MARDEROSIAN: Don't try</p> <p>4 to instruct the client as to what</p> <p>5 the damage claim is because this</p> <p>6 is not his realm, and it's</p> <p>7 contrary to the evidence. Okay?</p> <p>8 MR. ZAKARIN: No, it's not</p> <p>9 contrary to the evidence.</p> <p>10 MR. MARDEROSIAN: Yes, it is.</p> <p>11 MR. ZAKARIN: It's in his</p> <p>12 report.</p> <p>13 MR. MARDEROSIAN: Whatever,</p> <p>14 Don. It's argumentative.</p> <p>15 MR. ZAKARIN: It's in his</p> <p>16 report.</p> <p>17 MR. MARDEROSIAN: What's in</p> <p>18 his report?</p> <p>19 MR. ZAKARIN: The damage</p> <p>20 claim.</p> <p>21 Q Let's continue, Mr. Kohn.</p> <p>22 So you've got here -- you've</p> <p>23 taken from Aron and Robert their</p> <p>24 proposed numbers and you've included</p> <p>25 that here and you totaled them up,</p>	<p style="text-align: right;">Page 396</p> <p>1 KOHN</p> <p>2 to blanket licenses or fees from</p> <p>3 blanket licenses, that it should be</p> <p>4 allocated on a usage basis not across</p> <p>5 the libraries licensed?</p> <p>6 A I said that it was the custom</p> <p>7 and practice to take blanket -- fees</p> <p>8 that were generated on a blanket basis</p> <p>9 and allocate them based upon usage, not</p> <p>10 based upon the number of songs.</p> <p>11 Q Well, actually the next</p> <p>12 statement tells us what you say, which</p> <p>13 is -- give me a second.</p> <p>14 It says the determination --</p> <p>15 A Would you please tell us the</p> <p>16 page --</p> <p>17 Q Page 11. The determination</p> <p>18 of the relevant share based on the</p> <p>19 number of songs rather than the usage</p> <p>20 of the songs is inconsistent with both</p> <p>21 the terms of the 2011 composer</p> <p>22 agreement and customs and practices in</p> <p>23 the industry.</p> <p>24 What I want to try to do</p> <p>25 first is deal with -- because you just</p>
<p style="text-align: right;">Page 395</p> <p>1 KOHN</p> <p>2 right?</p> <p>3 A Yes.</p> <p>4 Q Okay. I just wanted to know</p> <p>5 where it came from.</p> <p>6 We'll come back to this a</p> <p>7 little bit later. Page 11 and onto</p> <p>8 Page 12 of your report. Now we get to</p> <p>9 your allocation theories.</p> <p>10 You say towards the bottom,</p> <p>11 the next to last bullet point on Page</p> <p>12 11, when licenses are granted on a</p> <p>13 blanket basis Aron and Robert are</p> <p>14 entitled to a pro rata share, their</p> <p>15 relevant share based upon the usage of</p> <p>16 their songs and recordings, not based</p> <p>17 upon the number of songs they delivered</p> <p>18 in relation to the total number of</p> <p>19 songs in the catalogs licensed.</p> <p>20 So let's parse that a little</p> <p>21 bit and go through it. You propose</p> <p>22 that there should be a usage based</p> <p>23 allocation model, correct?</p> <p>24 A Repeat the question.</p> <p>25 Q You propose that with respect</p>	<p style="text-align: right;">Page 397</p> <p>1 KOHN</p> <p>2 said it's inconsistent with customs and</p> <p>3 practices, correct?</p> <p>4 A Yes.</p> <p>5 Q Okay.</p> <p>6 A Not just that but --</p> <p>7 Q You've said the contract and</p> <p>8 customs and practices.</p> <p>9 A Right.</p> <p>10 Q Let's deal with customs and</p> <p>11 practices first.</p> <p>12 In terms of the customs and</p> <p>13 practices of production music libraries</p> <p>14 in determining how they allocate</p> <p>15 blanket licenses, did you contact any</p> <p>16 production music libraries to find out</p> <p>17 how they did it?</p> <p>18 A Excuse me. I was distracted.</p> <p>19 Q I'm sorry.</p> <p>20 MR. ZAKARIN: Why don't we</p> <p>21 reread the question, please.</p> <p>22 (Whereupon, the record was</p> <p>23 read.)</p> <p>24 A Not since I was engaged in</p> <p>25 this case.</p>

<p style="text-align: right;">Page 398</p> <p>1 KOHN</p> <p>2 Q Did you do it before?</p> <p>3 A I learned it through 35 years</p> <p>4 of discussing it with people, at least</p> <p>5 the past ten years of discussing it</p> <p>6 with people in the industry.</p> <p>7 Q Who did you discuss it with</p> <p>8 over the last ten years, can you</p> <p>9 identify anybody?</p> <p>10 A No, I can't -- no, I can't</p> <p>11 identify any specific person.</p> <p>12 Q And since you were retained,</p> <p>13 you didn't talk to anybody?</p> <p>14 A Well, I'm trying to think --</p> <p>15 no, since I've been retained, I didn't</p> <p>16 need to.</p> <p>17 Q And you can't identify any of</p> <p>18 these people in the production music</p> <p>19 library --</p> <p>20 A Well --</p> <p>21 Q Let me finish. It will be</p> <p>22 clear if I finish.</p> <p>23 A You started a question before</p> <p>24 I finished the last answer. But answer</p> <p>25 your -- ask your question.</p>	<p style="text-align: right;">Page 400</p> <p>1 KOHN</p> <p>2 is just a summary. Let's go back to</p> <p>3 the section of my report where I</p> <p>4 discuss this. You will have to help me</p> <p>5 here.</p> <p>6 MR. MARDEROSIAN: Take your</p> <p>7 time.</p> <p>8 A Okay. I think it's Page 71.</p> <p>9 Okay?</p> <p>10 Q Yes.</p> <p>11 A All right.</p> <p>12 So you're going to ask me a</p> <p>13 series of questions about who talked I</p> <p>14 to and since I didn't talk to -- I</p> <p>15 can't remember who I talked to, it's</p> <p>16 not fair to me at all.</p> <p>17 So it really is on Page 76.</p> <p>18 Q Okay.</p> <p>19 A Where I give a number of</p> <p>20 examples. I start with, I believe --</p> <p>21 and after I discuss the PROs usage if</p> <p>22 ASCAP or BMI allocated --</p> <p>23 Q Where on 76 is this?</p> <p>24 A I think I'm going back to 74.</p> <p>25 Q Okay. Now we're on 74.</p>
<p style="text-align: right;">Page 399</p> <p>1 KOHN</p> <p>2 Q You can't identify anybody</p> <p>3 that you've spoken with since you were</p> <p>4 retained to discuss that issue. And</p> <p>5 I'm asking you, you can't identify any</p> <p>6 of the people that you spoke with who</p> <p>7 were in the production music library</p> <p>8 business in the ten years prior to your</p> <p>9 retention; is that right?</p> <p>10 A Look, where did I say in</p> <p>11 these two sentences -- where are the</p> <p>12 words production music library here?</p> <p>13 That the first thing we have to do is</p> <p>14 going from top down not from bottom up.</p> <p>15 Q You're talking about customs</p> <p>16 and practice in the industry, right?</p> <p>17 A Yes.</p> <p>18 Q What industry are you talking</p> <p>19 about?</p> <p>20 A The entire industry. The</p> <p>21 entire record industry. Let's go back</p> <p>22 to what I --</p> <p>23 Q We're not in the record</p> <p>24 industry.</p> <p>25 A This is just a summary. This</p>	<p style="text-align: right;">Page 401</p> <p>1 KOHN</p> <p>2 A I'm sorry. I may have</p> <p>3 misspoke.</p> <p>4 Q PRO is like ASCAP and BMI?</p> <p>5 A PRO is like ASCAP and BMI.</p> <p>6 What I'm --</p> <p>7 Q I see it.</p> <p>8 A -- I'm saying here is it</p> <p>9 would be unfair and unreasonable for</p> <p>10 ASCAP or BMI to distribute income based</p> <p>11 upon the number of songs and their</p> <p>12 respective repertoire because a vast</p> <p>13 number of songs in the catalog, which</p> <p>14 may never be performed, would receive</p> <p>15 the same share of income as frequently</p> <p>16 performed songs.</p> <p>17 Q Now, we're not talking --</p> <p>18 A No, no.</p> <p>19 Q You're still talking. Go</p> <p>20 ahead.</p> <p>21 A I'm still talking.</p> <p>22 Q Please, go ahead.</p> <p>23 A I'm still talking. Because</p> <p>24 we're talking -- because as I said</p> <p>25 customs and practices in the music</p>

<p style="text-align: right;">Page 402</p> <p>1 KOHN</p> <p>2 industry and that applies across the</p> <p>3 board.</p> <p>4 Q The music industry?</p> <p>5 A Yeah. And it includes -- the</p> <p>6 music industry includes the record</p> <p>7 companies, PROs, music publishing</p> <p>8 companies and music production</p> <p>9 libraries or production music</p> <p>10 libraries.</p> <p>11 Q We're talking about sync</p> <p>12 licenses now, aren't we, blanket sync</p> <p>13 licenses?</p> <p>14 A No, we're looking at -- we're</p> <p>15 looking at blanket revenue.</p> <p>16 Q No.</p> <p>17 A Yes, we are. Oh, yes, we</p> <p>18 are.</p> <p>19 Q Yes, we are?</p> <p>20 A Yes, we are. We're looking</p> <p>21 at blanket -- a blanket license is a</p> <p>22 form of license where you -- one of</p> <p>23 your experts would like to use the word</p> <p>24 access. So you have -- we're going to</p> <p>25 reduce your transaction costs, you</p>	<p style="text-align: right;">Page 404</p> <p>1 KOHN</p> <p>2 that have been performed a lot or</p> <p>3 sync'd a lot or used a lot get the same</p> <p>4 amount of money as songs who don't get</p> <p>5 used at all. That is unfair and</p> <p>6 unreasonable. It may be practical</p> <p>7 because it makes your job easier, but</p> <p>8 it's unfair and it's unreasonable.</p> <p>9 That's the music industry. Everyone</p> <p>10 does that. And if you don't do it --</p> <p>11 if you don't do it, you're being unfair</p> <p>12 and you're being unreasonable.</p> <p>13 Q So -- oh, you're still</p> <p>14 talking?</p> <p>15 A Yeah.</p> <p>16 So I have those examples in</p> <p>17 this report on 76. I say it's a common</p> <p>18 practice for record companies to</p> <p>19 allocate blanket income on the basis of</p> <p>20 the most practical means available.</p> <p>21 For example, sometimes a record label</p> <p>22 must pay royalties on what is called</p> <p>23 breakage income. That is, they might</p> <p>24 have received an advance from an</p> <p>25 organization that does streaming from,</p>
<p style="text-align: right;">Page 403</p> <p>1 KOHN</p> <p>2 know, read US versus ASCAP and BMI.</p> <p>3 You know a 1979 Supreme Court case, the</p> <p>4 reason why they don't violate the</p> <p>5 antitrust laws, music publishing</p> <p>6 companies, is because they're reducing</p> <p>7 the transaction cost of their</p> <p>8 customers. That's what a blanket does.</p> <p>9 A -- it's something that's issued in a</p> <p>10 blanket form that you can go ahead and</p> <p>11 use what's here. All right? And</p> <p>12 whenever money is brought in on a</p> <p>13 blanket basis whether it's from a PRO</p> <p>14 issuing for performance licenses,</p> <p>15 whether it's a blanket for</p> <p>16 synchronization licenses, whether it's</p> <p>17 from a record company who's got</p> <p>18 breakage, whether it's from black box</p> <p>19 money that's overseas from music</p> <p>20 publishing companies, you always</p> <p>21 allocate it to the best of your ability</p> <p>22 on a fair and reasonable basis which is</p> <p>23 always based upon usage.</p> <p>24 If you don't base it upon</p> <p>25 usage you're going to have some songs</p>	<p style="text-align: right;">Page 405</p> <p>1 KOHN</p> <p>2 let's say, ten years ago, a company --</p> <p>3 Cue Tracks, it's a company that paid</p> <p>4 millions of dollars to the record</p> <p>5 companies, and they may have gone out</p> <p>6 of business before they even went</p> <p>7 online. All right? So now a record</p> <p>8 company is at advance of let's say 10</p> <p>9 or \$20 million, and how do they</p> <p>10 distribute that money to the artist?</p> <p>11 They have no reports whatsoever. What</p> <p>12 they do is they look at other streaming</p> <p>13 companies, look at the reports that</p> <p>14 they do have, do an extrapolation and</p> <p>15 allocate the money based upon usage.</p> <p>16 They do not allocate the money counting</p> <p>17 the number of recordings that they have</p> <p>18 in their catalog and giving everyone</p> <p>19 the same amount. Okay?</p> <p>20 So that's the record</p> <p>21 industry. And I say here -- and you</p> <p>22 were asking who did I talk to. Well,</p> <p>23 in that particular instance when I was</p> <p>24 in my company at Royalty Share I sat in</p> <p>25 policy discussions at Sony Music, which</p>

<p style="text-align: right;">Page 406</p> <p>1 KOHN</p> <p>2 is a sister company to Sony ATV, and</p> <p>3 that's how they do it. The Sony</p> <p>4 corporation does it that way. That's</p> <p>5 the way it's supposed to be done.</p> <p>6 Now, black box monies is</p> <p>7 monies overseas that music publishers</p> <p>8 receive that do not come accompanied by</p> <p>9 usage reports because it's money that</p> <p>10 was unallocated to anyone specifically.</p> <p>11 The music publisher gets it and an</p> <p>12 honest music publisher will distribute</p> <p>13 that monies -- its portions to the</p> <p>14 other publishers, sub-publisher,</p> <p>15 original publishers or others,</p> <p>16 copublishers and to songwriters on a</p> <p>17 fair and reasonable basis. And that's</p> <p>18 going to be based upon some projected</p> <p>19 usage or if they have the report it</p> <p>20 will be actual usage. And that's the</p> <p>21 way it's done.</p> <p>22 Nobody that I've ever heard</p> <p>23 of, except in the past day I heard of</p> <p>24 First Com, your last -- Mr. Katz said</p> <p>25 that he acquired a company when he was</p>	<p style="text-align: right;">Page 408</p> <p>1 KOHN</p> <p>2 strawman. I said it's based upon</p> <p>3 usage. Adam Taylor agrees it's based</p> <p>4 upon usage. I think anyone who would</p> <p>5 do it on the basis of the number of</p> <p>6 songs -- if ASCAP did it they'd be out</p> <p>7 of business the next day. If record</p> <p>8 companies did it, they'd be sued by</p> <p>9 their recording artists. And if a</p> <p>10 production music company did it to</p> <p>11 their songwriters, they would be sued</p> <p>12 by their -- sued by their songwriters.</p> <p>13 And that's what this case is about.</p> <p>14 Q Okay. Let me know when</p> <p>15 you're done.</p> <p>16 A I'm done.</p> <p>17 Q Okay.</p> <p>18 You talked about custom and</p> <p>19 practice, but the custom and practice</p> <p>20 now you're talking about is the music</p> <p>21 industry generally and not related to</p> <p>22 sync licensing by production music</p> <p>23 libraries; is that right?</p> <p>24 MR. MARDEROSIAN: I'm going</p> <p>25 to object.</p>
<p style="text-align: right;">Page 407</p> <p>1 KOHN</p> <p>2 at Zamba that did it that way. I was</p> <p>3 surprised to hear that. A small</p> <p>4 production music library did it that</p> <p>5 way.</p> <p>6 And then you have your own</p> <p>7 witness, Adam Taylor, he runs a</p> <p>8 production music library; and he does</p> <p>9 it the right way. He basis it on</p> <p>10 usage -- usage reports. Now, all of</p> <p>11 your experts went to great lengths to</p> <p>12 say that I said in my report that it</p> <p>13 has to be done on actual usage. I</p> <p>14 suspect that that someone may have put</p> <p>15 in their heads that I said actual</p> <p>16 usage. But I didn't say that it had to</p> <p>17 be done in actual usage, BMI and ASCAP</p> <p>18 don't do it on actual usage all the</p> <p>19 time. They do get numbers based upon</p> <p>20 electronic usage reports that reflect</p> <p>21 accurate usage pretty well.</p> <p>22 But when your experts set up</p> <p>23 strawman that says that nobody can do</p> <p>24 it in actual usage, that's simply not</p> <p>25 what I said in my report. It's a</p>	<p style="text-align: right;">Page 409</p> <p>1 KOHN</p> <p>2 Mischaracterizes the</p> <p>3 testimony. Argumentative.</p> <p>4 A I am using it as sync</p> <p>5 licenses for a production music</p> <p>6 library. I mentioned Adam Taylor</p> <p>7 two -- how many times did I mention him</p> <p>8 in the past ten minutes? He runs a</p> <p>9 production music library, has admitted</p> <p>10 that his blanket sync licenses, when he</p> <p>11 gets the income -- when he gets his</p> <p>12 income he also gets usage reports to</p> <p>13 find out what songs have been sync'd.</p> <p>14 And he uses some message -- some</p> <p>15 methodology based upon his usage. He</p> <p>16 wasn't specific in his report, but I</p> <p>17 was very happy to hear that he's doing</p> <p>18 it in some. I don't know for sure. I</p> <p>19 haven't seen his calculations, but if</p> <p>20 it's based upon usage, it's likely to</p> <p>21 be more fair and more reasonable than</p> <p>22 basing it upon the number of songs in</p> <p>23 the catalog, which virtually nobody</p> <p>24 does except your client.</p> <p>25 Q You said virtually nobody</p>



<p style="text-align: right;">Page 410</p> <p>1 KOHN</p> <p>2 does. What -- who have you talked to?</p> <p>3 A I don't have to talk to</p> <p>4 everybody in the industry.</p> <p>5 Q You don't have to talk to</p> <p>6 anybody it appears.</p> <p>7 A I --</p> <p>8 MR. MARDEROSIAN: Folks,</p> <p>9 you're arguing with each other.</p> <p>10 Q You haven't identified a</p> <p>11 single --</p> <p>12 COURT REPORTER: Excuse me.</p> <p>13 A I have -- I don't have to --</p> <p>14 Q You haven't identified a</p> <p>15 single production music library that</p> <p>16 you've contacted, spoke to, or found</p> <p>17 out how they do it; is that right?</p> <p>18 A I sat in a deposition -- I'm</p> <p>19 sorry -- in a deposition yesterday. If</p> <p>20 you don't remember, you can get the</p> <p>21 transcript and read it. Right?</p> <p>22 Q I remember it well.</p> <p>23 A His report says usage. He</p> <p>24 was asked specifically whether he</p> <p>25 thought that was fair. Now, this is a</p>	<p style="text-align: right;">Page 412</p> <p>1 KOHN</p> <p>2 Q I don't know what you're</p> <p>3 saying.</p> <p>4 MR. MARDEROSIAN: Hold on.</p> <p>5 Stop.</p> <p>6 He's answered the question.</p> <p>7 You're now arguing with him. Stop</p> <p>8 arguing with him, Don.</p> <p>9 Let's go to the next topic.</p> <p>10 You've got his testimony on the</p> <p>11 subject.</p> <p>12 MR. ZAKARIN: He hasn't</p> <p>13 identified a single production</p> <p>14 music --</p> <p>15 MR. MARDEROSIAN: Incorrect.</p> <p>16 You haven't listened to what</p> <p>17 he said.</p> <p>18 MR. ZAKARIN: I was --</p> <p>19 MR. MARDEROSIAN: You -- save</p> <p>20 it for trial, Don.</p> <p>21 MR. ZAKARIN: No.</p> <p>22 MR. MARDEROSIAN: Save it for</p> <p>23 trial and let's see --</p> <p>24 MR. ZAKARIN: That's not how</p> <p>25 it goes.</p>
<p style="text-align: right;">Page 411</p> <p>1 KOHN</p> <p>2 guy who sat on the board of APM, the</p> <p>3 production music library that your</p> <p>4 other expert is the CEO of.</p> <p>5 Q Um-hum.</p> <p>6 A He circled the wagon saying</p> <p>7 of course it's okay to do this because</p> <p>8 I had a company like that myself that</p> <p>9 that did it.</p> <p>10 Q You didn't answer my</p> <p>11 question.</p> <p>12 A I did answer your question.</p> <p>13 I just told you -- I just told you a</p> <p>14 production music library out of the</p> <p>15 voice of your own experts, two of them,</p> <p>16 okay, are saying that they -- that's</p> <p>17 the way they do it.</p> <p>18 Q I just want to make sure. So</p> <p>19 your testimony about custom and</p> <p>20 practice is now based upon what Paul</p> <p>21 Katz testified to yesterday and what</p> <p>22 Adam Taylor has in his report; is that</p> <p>23 it?</p> <p>24 A That's not what I'm</p> <p>25 testifying. It's not what I said.</p>	<p style="text-align: right;">Page 413</p> <p>1 KOHN</p> <p>2 MR. MARDEROSIAN: -- if the</p> <p>3 jury accepts your argument on</p> <p>4 this.</p> <p>5 MR. ZAKARIN: That's not how</p> <p>6 it goes, Mick. My questions get</p> <p>7 answered, or else I don't leave</p> <p>8 them.</p> <p>9 MR. MARDEROSIAN: His</p> <p>10 question -- he did answer your</p> <p>11 question, you're now just arguing</p> <p>12 it.</p> <p>13 A You just don't like the</p> <p>14 answer to the question.</p> <p>15 Q Well, you -- if you gave an</p> <p>16 answer, I might like it.</p> <p>17 I asked you --</p> <p>18 COURT REPORTER: Excuse me.</p> <p>19 Gentlemen, please.</p> <p>20 MR. MARDEROSIAN: Hold on,</p> <p>21 Don. Give her -- give her a</p> <p>22 moment.</p> <p>23 COURT REPORTER: I just need</p> <p>24 you to speak one at a time,</p> <p>25 please.</p>

<p style="text-align: right;">Page 414</p> <p>1 KOHN</p> <p>2 MR. ZAKARIN: We'll try.</p> <p>3 Q You've talked about custom</p> <p>4 and practice and my question was very</p> <p>5 simple. What production music</p> <p>6 libraries have you ascertained allocate</p> <p>7 blanket license income on any kind of a</p> <p>8 usage basis? We know APM does it on a</p> <p>9 reported usage basis. What else? What</p> <p>10 other production music library</p> <p>11 allocates it, however they allocate it?</p> <p>12 Do you have any information? Any</p> <p>13 information?</p> <p>14 A I suspect that every other</p> <p>15 one does it except your client today</p> <p>16 and maybe First Com if it still exists.</p> <p>17 Q I didn't ask what you</p> <p>18 suspect. I asked what you know, facts.</p> <p>19 A I know the customs and</p> <p>20 practices of the music industry. I</p> <p>21 can't tell you over 20 years of being</p> <p>22 in the industry and discussing with</p> <p>23 people who know what they're -- I may</p> <p>24 have discussed it with Adam Taylor, who</p> <p>25 knows, because we did discuss his</p>	<p style="text-align: right;">Page 416</p> <p>1 KOHN</p> <p>2 about your own experts, Don.</p> <p>3 Q What you haven't talked</p> <p>4 about -- we have Adam Taylor who says</p> <p>5 that they do it on a -- on a reported</p> <p>6 usage basis and that's fine. And Adam</p> <p>7 Taylor says what he says. And it's in</p> <p>8 his report.</p> <p>9 I'm asking you what</p> <p>10 production music libraries do you</p> <p>11 know -- do you know how other</p> <p>12 production music libraries allocate</p> <p>13 blanket license income?</p> <p>14 A Yes, they all do it.</p> <p>15 Q Who?</p> <p>16 A They all do it except</p> <p>17 Extreme. APM is one example of it.</p> <p>18 And over the years --</p> <p>19 Q Give me another examples.</p> <p>20 A Over the years -- I can't</p> <p>21 imagine -- my opinion is it's not fair</p> <p>22 or reasonable.</p> <p>23 Q I didn't ask that. You can</p> <p>24 have that opinion.</p> <p>25 MR. MARDEROSIAN: He told you</p>
<p style="text-align: right;">Page 415</p> <p>1 KOHN</p> <p>2 business when I met with him five, six</p> <p>3 years ago, whenever it was. But I</p> <p>4 learned this over a period of time.</p> <p>5 And it is not fair -- my opinion is</p> <p>6 that it's not fair or reasonable to</p> <p>7 base it upon the number of songs.</p> <p>8 Nobody apparently but your client does</p> <p>9 it. You have not and your experts have</p> <p>10 not pointed to anyone who does it that</p> <p>11 way.</p> <p>12 Q You're the one who's talking</p> <p>13 about custom and practice.</p> <p>14 A Yes.</p> <p>15 Q I'm not. So I want to know</p> <p>16 what the custom and practice is of</p> <p>17 production music libraries allocating</p> <p>18 it. You have a statement --</p> <p>19 A Production.</p> <p>20 Q -- the basis for the</p> <p>21 statement -- you've talked about the</p> <p>22 ASCAP and BMI. You've talked about</p> <p>23 record companies. You've talked about</p> <p>24 black box.</p> <p>25 MR. MARDEROSIAN: He's talked</p>	<p style="text-align: right;">Page 417</p> <p>1 KOHN</p> <p>2 Sony Music, Don. You're leaving</p> <p>3 that out.</p> <p>4 MR. ZAKARIN: Sony Music is</p> <p>5 not a production music library.</p> <p>6 MR. MARDEROSIAN: He told you</p> <p>7 how they handle the publishing in</p> <p>8 regard to those uses.</p> <p>9 MR. ZAKARIN: Black Box. I</p> <p>10 understand black box. That's not</p> <p>11 the question.</p> <p>12 A Yes. The music industry</p> <p>13 allocates money that's presented on a</p> <p>14 blanket basis whether it's the leftover</p> <p>15 advance, whether it's black box money,</p> <p>16 whether it's income. There's no one</p> <p>17 who's going to -- there's no one except</p> <p>18 maybe one of your witnesses yesterday</p> <p>19 who suggested that that might even be</p> <p>20 close to being fair. It's not.</p> <p>21 I don't have to talk to every</p> <p>22 production music library in the world.</p> <p>23 Q Do you have to talk to any?</p> <p>24 A I don't even know all of the</p> <p>25 ones that do it on a blanket basis,</p>

<p style="text-align: right;">Page 418</p> <p>1 KOHN</p> <p>2 okay. Has your expert witnesses</p> <p>3 reported back as to who other -- anyone</p> <p>4 other than First Com that does it? You</p> <p>5 have three -- you have an expert</p> <p>6 witness who is the CEO of one of the</p> <p>7 largest production music libraries in</p> <p>8 the world.</p> <p>9 Q Yes.</p> <p>10 A Your client is the CEO of a</p> <p>11 production music library, one of the</p> <p>12 largest in the world.</p> <p>13 Q Yes.</p> <p>14 A Have either of them suggested</p> <p>15 that anyone other than Extreme does it</p> <p>16 this way? What do they say?</p> <p>17 Q Are you aware of how many</p> <p>18 production music library --</p> <p>19 A I didn't see that.</p> <p>20 Q Are you aware of how many</p> <p>21 production music libraries there are in</p> <p>22 the United States?</p> <p>23 A How many? The number?</p> <p>24 Q Yeah.</p> <p>25 A No. It must be a large</p>	<p style="text-align: right;">Page 420</p> <p>1 KOHN</p> <p>2 Q Have you done a survey of any</p> <p>3 production --</p> <p>4 A Yeah, I did a survey.</p> <p>5 Q Of the production music</p> <p>6 library?</p> <p>7 COURT REPORTER: Excuse me.</p> <p>8 Gentlemen, please.</p> <p>9 MR. MARDEROSIAN: You're just</p> <p>10 arguing.</p> <p>11 MR. ZAKARIN: I just want to</p> <p>12 know the source.</p> <p>13 A I haven't been -- I haven't</p> <p>14 been asked to do a survey and nor have</p> <p>15 any of your experts come forth with</p> <p>16 anybody else.</p> <p>17 Q So you haven't done a</p> <p>18 survey --</p> <p>19 A Nor has your client.</p> <p>20 COURT REPORTER: Excuse me.</p> <p>21 I'm going to need to take a break.</p> <p>22 MR. ZAKARIN: I know. I'm</p> <p>23 sorry. I'm asking questions, and</p> <p>24 he's actually answering on top of</p> <p>25 my questions.</p>
<p style="text-align: right;">Page 419</p> <p>1 KOHN</p> <p>2 number.</p> <p>3 Q And with the exception of</p> <p>4 Adam Taylor's testimony in his report</p> <p>5 about on a reported usage basis, do you</p> <p>6 know how any of them -- any of these</p> <p>7 many numbered production music</p> <p>8 libraries allocate blanket license</p> <p>9 income? Do you know how any of them do</p> <p>10 it?</p> <p>11 A Yes, they do it on a usage</p> <p>12 basis.</p> <p>13 Q And what's the basis for your</p> <p>14 statement that they do it on a usage</p> <p>15 basis?</p> <p>16 A Because everybody does it</p> <p>17 that way in the business except your</p> <p>18 client.</p> <p>19 Q So this is just a conclusion.</p> <p>20 It's not based upon your knowledge of</p> <p>21 any facts, right?</p> <p>22 MR. MARDEROSIAN: You're</p> <p>23 arguing with him. You're arguing</p> <p>24 with him. He's answered your</p> <p>25 question.</p>	<p style="text-align: right;">Page 421</p> <p>1 KOHN</p> <p>2 Q You haven't done a survey,</p> <p>3 right? I'm not saying you were asked</p> <p>4 to --</p> <p>5 A I have not done a</p> <p>6 questionnaires kind of survey.</p> <p>7 Q And you haven't done a census</p> <p>8 or questioned any executives of any</p> <p>9 production music library about how do</p> <p>10 they allocate their blanket license</p> <p>11 income; is that right? Yes or no?</p> <p>12 A In the -- since the start of</p> <p>13 this case, no, for sure.</p> <p>14 Q And you didn't ask them</p> <p>15 before the start of this case, did you?</p> <p>16 A I might have.</p> <p>17 Q But you don't recall whether</p> <p>18 you did?</p> <p>19 A I don't recall.</p> <p>20 Q Okay.</p> <p>21 A How did I come to this</p> <p>22 knowledge? I can't remember who I</p> <p>23 may -- might have talked to in the</p> <p>24 1990s in researching the book.</p> <p>25 Q I understand.</p>



<p style="text-align: right;">Page 422</p> <p>1 KOHN</p> <p>2 But it's your opinion,</p> <p>3 nonetheless, that it's custom and</p> <p>4 practice to allocate it. So it's now</p> <p>5 not on an actual usage basis. It's on</p> <p>6 some usage basis?</p> <p>7 A You used the word actual</p> <p>8 usage, I didn't. I used the word</p> <p>9 usage. And you keep doing that. Your</p> <p>10 experts keep doing that.</p> <p>11 It was a strawman. It was</p> <p>12 ridiculous for them to go on pages</p> <p>13 after pages and say that nobody does it</p> <p>14 on actual usage when they know that</p> <p>15 everybody does it on usage. And that</p> <p>16 was ridiculous. They look like fools.</p> <p>17 Q Well, that's your opinion</p> <p>18 which is another good opinion.</p> <p>19 So it's a usage basis now.</p> <p>20 It's not actual -- it's some sort of</p> <p>21 usage basis. That's your testimony?</p> <p>22 A That's correct.</p> <p>23 Q Okay.</p> <p>24 A Some usage basis or projected</p> <p>25 usage basis. And those are the words</p>	<p style="text-align: right;">Page 424</p> <p>1 KOHN</p> <p>2 a fair, reasonable, practical basis.</p> <p>3 Q I know that. And then it</p> <p>4 says there after that, such basis to be</p> <p>5 determined in company and the HM</p> <p>6 transferee's sole discretion, right?</p> <p>7 A Yes.</p> <p>8 Q You understand what sole</p> <p>9 discretion means?</p> <p>10 MR. MARDEROSIAN: Objection.</p> <p>11 Vague.</p> <p>12 A I understand what the word</p> <p>13 fair and reasonable and practical basis</p> <p>14 means. I know that when a contract,</p> <p>15 whether it has sole discretion or not,</p> <p>16 it is going to be subject to an implied</p> <p>17 obligation of good faith and fair</p> <p>18 dealing.</p> <p>19 Sole discretion doesn't mean</p> <p>20 they can ignore what's in that</p> <p>21 paragraph. They wouldn't have been</p> <p>22 able to -- why didn't they just simply</p> <p>23 say they can agree to apportion the</p> <p>24 licensing income on their sole</p> <p>25 discretion, period? They didn't do</p>
<p style="text-align: right;">Page 423</p> <p>1 KOHN</p> <p>2 that were used in the contract. I</p> <p>3 assume that's what you're moving to</p> <p>4 next.</p> <p>5 Q Yes. Yes, we are.</p> <p>6 Excellent.</p> <p>7 Let's pull out Exhibit 3, I</p> <p>8 think it is. I think it's</p> <p>9 Paragraph 7.3.</p> <p>10 A It is.</p> <p>11 Q Now, what it says, I think --</p> <p>12 let's see if I can recall your quote</p> <p>13 from the contract. Top of Page 12,</p> <p>14 your quote from the contract says the</p> <p>15 2011 composer agreement states that the</p> <p>16 determination or apportion of the</p> <p>17 relevant share is to be made on a fair,</p> <p>18 reasonable and practical basis, right?</p> <p>19 A Right.</p> <p>20 Q And actually that's not the</p> <p>21 complete quote, is it?</p> <p>22 A This is a summary of the</p> <p>23 quote.</p> <p>24 Q The real quote says --</p> <p>25 A The only part I quoted was on</p>	<p style="text-align: right;">Page 425</p> <p>1 KOHN</p> <p>2 that.</p> <p>3 Q I agree.</p> <p>4 A Right? They led the person</p> <p>5 who was reading this contract, the</p> <p>6 person who didn't draft the contract,</p> <p>7 two young songwriters signed a contract</p> <p>8 because they're reading words like</p> <p>9 fair, reasonable and practical. Anyone</p> <p>10 would read it what way. And then it</p> <p>11 says without prejudice to the</p> <p>12 generality of the foregoing company and</p> <p>13 HM transferees reserves the right to</p> <p>14 apportion the licensing income, the</p> <p>15 blanket licensing income on the ways</p> <p>16 that are standard with the customs and</p> <p>17 practices of the music industry.</p> <p>18 Any -- on any actual usage basis</p> <p>19 determined by company. On any</p> <p>20 projected usage basis determined by</p> <p>21 company or on a basis which is a</p> <p>22 composite of the methods described</p> <p>23 above. It doesn't have a D that says</p> <p>24 or none of the above. All right?</p> <p>25 Q Reserves the right --</p>

<p style="text-align: right;">Page 450</p> <p>1 KOHN</p> <p>2 BMI and ASCAP to make it a more rapid</p> <p>3 process, I suppose.</p> <p>4 Q Do you have any familiarity</p> <p>5 with the finances of production music</p> <p>6 libraries?</p> <p>7 MR. MARDEROSIAN: Objection.</p> <p>8 Vague. Overbroad.</p> <p>9 Q You can answer the question.</p> <p>10 A No, I don't have any -- other</p> <p>11 than the testimony that I've been able</p> <p>12 to provide and the expertise that I</p> <p>13 have about customs and practices. No,</p> <p>14 I don't have -- when you say finances</p> <p>15 I'm thinking of balance sheet income</p> <p>16 statement --</p> <p>17 Q Yeah.</p> <p>18 A -- cash flow, things like</p> <p>19 that.</p> <p>20 Q Yes.</p> <p>21 A No.</p> <p>22 Q We're talking the same</p> <p>23 language.</p> <p>24 A Right. No. Nor have I been</p> <p>25 asked to opine on any of that.</p>	<p style="text-align: right;">Page 452</p> <p>1 KOHN</p> <p>2 A He wasn't terribly specific,</p> <p>3 no.</p> <p>4 Q Okay. You understand, don't</p> <p>5 you, that if usage is not reported to</p> <p>6 them, then they don't pay anybody</p> <p>7 who's -- for which they don't get</p> <p>8 reports?</p> <p>9 A Well, maybe they'll get sued</p> <p>10 too. Because most production music</p> <p>11 libraries, my understanding of the</p> <p>12 customs and practices in the business</p> <p>13 and from agreements that I've seen in</p> <p>14 the past is that when you don't get a</p> <p>15 usage report you do allocate the money</p> <p>16 on some projected basis based upon the</p> <p>17 usage reports that you do get.</p> <p>18 Q When you say from your</p> <p>19 understanding, you're talking -- we've</p> <p>20 already covered that. So I'll skip</p> <p>21 that. We covered that pretty well.</p> <p>22 A Thank you.</p> <p>23 (Whereupon, a brief recess</p> <p>24 was taken.)</p> <p>25 Q On Page 14 of your report,</p>
<p style="text-align: right;">Page 451</p> <p>1 KOHN</p> <p>2 Q I understand.</p> <p>3 Do you have any understanding</p> <p>4 how much a usage apportionment approach</p> <p>5 might cost a production music library</p> <p>6 to implement?</p> <p>7 A Depends upon the</p> <p>8 circumstances. Apparently APM uses</p> <p>9 usage reports; and they seem to find it</p> <p>10 not burdensome, otherwise why would</p> <p>11 they do that.</p> <p>12 Q You're aware --</p> <p>13 A Well, they would do it for</p> <p>14 obligations for -- contractual</p> <p>15 obligations perhaps.</p> <p>16 Q You're aware from having read</p> <p>17 Adam Taylor's report that his view of</p> <p>18 the reported usage method is that a lot</p> <p>19 of people whose works are used actually</p> <p>20 don't get paid?</p> <p>21 A I don't recall reading that</p> <p>22 in the report.</p> <p>23 Q Well, on the reported usage</p> <p>24 basis -- do you understand what APM's</p> <p>25 reported usage basis is?</p>	<p style="text-align: right;">Page 453</p> <p>1 KOHN</p> <p>2 I'll ask you to turn there, you say</p> <p>3 Viacom Extreme's issuance of direct</p> <p>4 reproduction of public performance</p> <p>5 licenses to Viacom for just one dollar</p> <p>6 was a violation of the composer -- Aron</p> <p>7 and Robert's composer agreements. And</p> <p>8 on Page 83 of your report you address</p> <p>9 that again. On Page 83 you say, and</p> <p>10 there's even a caption on it, Viacom</p> <p>11 Extreme's secret issuance of direct</p> <p>12 reproduction and public performance</p> <p>13 licenses to Viacom for just one dollar</p> <p>14 was a violation of Aron and Robert's</p> <p>15 composer agreements.</p> <p>16 Then you say that it appears</p> <p>17 that Viacom Extreme joint venture</p> <p>18 actually granted back to Viacom not</p> <p>19 only a blanket reproduction license but</p> <p>20 a blanket direct public performance</p> <p>21 license to all of Viacom's broadcasters</p> <p>22 and producers. And then it continues</p> <p>23 on and names a number of them.</p> <p>24 And on Page 84 you say</p> <p>25 that -- you say it again, thus it</p>

<p style="text-align: right;">Page 482</p> <p>1 KOHN</p> <p>2 Q There's a number of things.</p> <p>3 And I think you've already testified</p> <p>4 that essentially the values were</p> <p>5 provided to you by Aron and Robert and</p> <p>6 you assessed them?</p> <p>7 A Correct. The copyright owner</p> <p>8 or any property owners are aloud to</p> <p>9 make their own assessment as to the</p> <p>10 value of their own property.</p> <p>11 Q Right. Subject to the</p> <p>12 contract, but --</p> <p>13 A Right.</p> <p>14 Q Let's talk about this for a</p> <p>15 little bit.</p> <p>16 They provided you with some</p> <p>17 licenses that they had entered into,</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q Did they provide you any of</p> <p>21 their gratis licenses to look at?</p> <p>22 A No.</p> <p>23 Q So they selected the licenses</p> <p>24 that they wanted to show you?</p> <p>25 MR. MARDEROSIAN: Only if you</p>	<p style="text-align: right;">Page 484</p> <p>1 KOHN</p> <p>2 A I do remember that.</p> <p>3 Q Okay.</p> <p>4 So other than looking at</p> <p>5 these 10 or 15 licenses, did you do any</p> <p>6 other kind of a survey in order to come</p> <p>7 up with the values that you thought</p> <p>8 were fair and reasonable?</p> <p>9 A I have done surveys. Not</p> <p>10 written surveys, but surveys over the</p> <p>11 past 20 years which I've kept up to</p> <p>12 date in terms of what are reasonable</p> <p>13 license fees for the use of music in</p> <p>14 commercials and theatricals and</p> <p>15 television programming. I summarize</p> <p>16 that or I try to keep it up to date in</p> <p>17 the 26 chapter of Kohn Music Licensing.</p> <p>18 And so -- yeah, so I didn't</p> <p>19 do anything beyond all the accumulated</p> <p>20 knowledge that I've had over the years</p> <p>21 in talking to people and talking to as</p> <p>22 a -- I feel like in a way I'm like a</p> <p>23 reporter talking to various people in</p> <p>24 the industry. I might know more than</p> <p>25 any individual at any particular music</p>
<p style="text-align: right;">Page 483</p> <p>1 KOHN</p> <p>2 know that that's the case.</p> <p>3 A I don't -- yeah, that's true.</p> <p>4 All I know is I got a set of licenses</p> <p>5 that were like, I don't know whether it</p> <p>6 was 10 or 15 are 20. Something like</p> <p>7 that.</p> <p>8 Q They provided you with 10 or</p> <p>9 15 licenses.</p> <p>10 A That's true.</p> <p>11 Q Do you know how many licenses</p> <p>12 of their works they've entered into?</p> <p>13 A No.</p> <p>14 Q And do you know the range of</p> <p>15 values of the licenses for their works</p> <p>16 they've entered into?</p> <p>17 A Not entirely.</p> <p>18 Q Okay. And have you seen</p> <p>19 their answers to interrogatories where</p> <p>20 they identify all of the licenses --</p> <p>21 not they'll produce them, but they</p> <p>22 identify the license amounts --</p> <p>23 A Yes.</p> <p>24 Q -- and include about</p> <p>25 15 percent of them being gratis?</p>	<p style="text-align: right;">Page 485</p> <p>1 KOHN</p> <p>2 publishing company because they only</p> <p>3 know what they do. And they tell me,</p> <p>4 and then I verify it with somebody</p> <p>5 else. And somebody will say, that's</p> <p>6 sounds too high to me or sounds too</p> <p>7 low. They would have antitrust</p> <p>8 problems in talking to each other about</p> <p>9 what they charge for license fees, but</p> <p>10 they have no problem talking to me.</p> <p>11 Q You've done your -- you've</p> <p>12 done a lot of work in terms of your</p> <p>13 book. Did you do a study of the</p> <p>14 license fees being paid for production</p> <p>15 music outside of looking at the 10 to</p> <p>16 15 licenses given to you by Aron and</p> <p>17 Robert?</p> <p>18 A Yeah. There's a -- well,</p> <p>19 when you say study, I would say that my</p> <p>20 Chapter 26 does talk about licenses for</p> <p>21 production music libraries -- licenses</p> <p>22 of music from production music</p> <p>23 libraries. I don't recall actually the</p> <p>24 depth to which I was doing that</p> <p>25 because, remember, production music</p>

<p style="text-align: right;">Page 486</p> <p>1 KOHN</p> <p>2 libraries license both the sound</p> <p>3 recording and the musical work. And</p> <p>4 they're providing some real value there</p> <p>5 in reducing the transaction cost of the</p> <p>6 licensees. So it's a level of</p> <p>7 refinement that I might consider</p> <p>8 putting in the next edition of my book.</p> <p>9 Q Did you go to and examine the</p> <p>10 backup for your book in assessing the</p> <p>11 reasonableness of these values given to</p> <p>12 you by Aron and Robert?</p> <p>13 A I don't have any backup in</p> <p>14 any written form for any of the license</p> <p>15 fees that I have in my book.</p> <p>16 Q Did you -- given that, did</p> <p>17 you consult with any source to try to</p> <p>18 determine the reasonableness of the</p> <p>19 fees that they propose to you, you</p> <p>20 know, in assessing? Did you do any</p> <p>21 source at all?</p> <p>22 A I wouldn't have to do that</p> <p>23 because whatever sources I had over the</p> <p>24 past ten years or so to update the</p> <p>25 figures that I had in my book were my</p>	<p style="text-align: right;">Page 488</p> <p>1 KOHN</p> <p>2 I actually sorted them by</p> <p>3 dates. I went from 2010 to 2017 to</p> <p>4 make sure that I'm kind of matching</p> <p>5 their growth and their popularity of</p> <p>6 their songs. I actually listened to</p> <p>7 the songs to make sure that what I was</p> <p>8 hearing from Mulholland Drive, which I</p> <p>9 was able to do by going to the Extreme</p> <p>10 website and just click on it and use my</p> <p>11 TuneSat account or access. And</p> <p>12 listened to the songs to say, okay,</p> <p>13 what was in Lonely Orchard sounds</p> <p>14 production values that are just as</p> <p>15 good, equivalent to the ones that they</p> <p>16 have given on a work-for-hire basis to</p> <p>17 Viacom.</p> <p>18 So I felt that they were</p> <p>19 comparable and they -- I'm watching</p> <p>20 them get 60,000, 55,000 option 85,000,</p> <p>21 you know, 30,000, 40,000. I see all of</p> <p>22 that.</p> <p>23 Q But you didn't see any of the</p> <p>24 gratis licenses?</p> <p>25 A I didn't see any of the</p>
<p style="text-align: right;">Page 487</p> <p>1 KOHN</p> <p>2 sources for determining these license</p> <p>3 fees.</p> <p>4 Q And did you compare what you</p> <p>5 have in your book for production music</p> <p>6 license fees ranges to the numbers that</p> <p>7 Rob and Aron gave you? Did you consult</p> <p>8 your book at all in doing it?</p> <p>9 A I did consult my book, but I</p> <p>10 also took a look at my license fees</p> <p>11 that are in my book for production</p> <p>12 music. And I took a look at the</p> <p>13 license fees that they were issuing for</p> <p>14 production music. Or I would say if</p> <p>15 you want to call it production music,</p> <p>16 that's what they do in Lonely Orchard</p> <p>17 Music Publishing. They're producing</p> <p>18 production music with their sound</p> <p>19 recordings. And I found -- they gave</p> <p>20 me a license that said they got \$75,000</p> <p>21 sync fee for one. They got a 50,000</p> <p>22 sync fee for another one. They got</p> <p>23 20,000 -- 10,000, I think, was the</p> <p>24 lowest which is the one they -- they</p> <p>25 got from -- in 2010.</p>	<p style="text-align: right;">Page 489</p> <p>1 KOHN</p> <p>2 gratis licenses.</p> <p>3 Q You didn't see any of the</p> <p>4 lower value licenses. They selected</p> <p>5 what they wanted you to see?</p> <p>6 MR. MARDEROSIAN: Well, no,</p> <p>7 you're arguing with him.</p> <p>8 And you asked that question</p> <p>9 before, Don; and he's already told</p> <p>10 you he doesn't know if that's the</p> <p>11 case.</p> <p>12 You've had your opportunity</p> <p>13 to depose Aron and Robert, and</p> <p>14 you'll hear them again at trial</p> <p>15 explain all of this.</p> <p>16 So I'm going to object. It's</p> <p>17 argumentative and you're just</p> <p>18 asking this witness to speculate.</p> <p>19 A There are a variety of</p> <p>20 reasons why a gratis license might be</p> <p>21 given. I felt I was getting a good</p> <p>22 overview. It covered the entire</p> <p>23 time frame. It covered things that</p> <p>24 were very similar to the licenses that</p> <p>25 were listed in the exhibits in my</p>

<p style="text-align: right;">Page 490</p> <p>1 KOHN</p> <p>2 report. And what the fees that we came</p> <p>3 up with was reasonable -- were</p> <p>4 reasonable.</p> <p>5 Q By the way under the</p> <p>6 agreement, the 2011 agreement, is there</p> <p>7 any provision that gives Robert and</p> <p>8 Aron the right to second guess the</p> <p>9 license fees that Extreme was able to</p> <p>10 obtain?</p> <p>11 MR. MARDEROSIAN: I'm just</p> <p>12 going to object. It calls for a</p> <p>13 legal opinion and conclusion.</p> <p>14 It's called good faith and</p> <p>15 fair dealing as we all know which</p> <p>16 is a legal opinion and conclusion.</p> <p>17 MR. ZAKARIN: Could you swear</p> <p>18 in Mr. Marderosian? He wants to</p> <p>19 testify.</p> <p>20 MR. MARDEROSIAN: You're</p> <p>21 asking for a legal opinion, Don.</p> <p>22 MR. ZAKARIN: No, I asked him</p> <p>23 whether there's a provision in the</p> <p>24 agreement that gives him the right</p> <p>25 to second guess.</p>	<p style="text-align: right;">Page 492</p> <p>1 KOHN</p> <p>2 legal conclusion and I apologize for</p> <p>3 that but that's a summary -- where I</p> <p>4 felt this -- I see a \$14,000 license</p> <p>5 fee for the use of music in Land Rover.</p> <p>6 I see small license fees, Starbucks.</p> <p>7 They were way, way under.</p> <p>8 Q Way, way under what?</p> <p>9 A Way, way under what I thought</p> <p>10 was going to be -- based upon what they</p> <p>11 were getting for their quality of</p> <p>12 music. You can't just say this is</p> <p>13 just -- oh, just a piece of production</p> <p>14 music. Just some genre thing. These</p> <p>15 were some of the best songs that you</p> <p>16 guys had.</p> <p>17 Q You listened to the entire</p> <p>18 library? Did you listen to Hans Zimmer</p> <p>19 stuff?</p> <p>20 A No, I wasn't giving it a</p> <p>21 qualitative judgment. I did a</p> <p>22 quantitative judgment based upon</p> <p>23 reports that you provided during this</p> <p>24 litigation.</p> <p>25 Q Two libraries, not all the</p>
<p style="text-align: right;">Page 491</p> <p>1 KOHN</p> <p>2 That wasn't a legal opinion.</p> <p>3 MR. MARDEROSIAN: You both</p> <p>4 scraped at the agreement and</p> <p>5 there's an implied covenant of</p> <p>6 good faith and --</p> <p>7 MR. ZAKARIN: You're</p> <p>8 testifying again, Mr. Marderosian.</p> <p>9 MR. MARDEROSIAN: Well,</p> <p>10 you're asking me --</p> <p>11 A No, he's just repeating what</p> <p>12 I said earlier.</p> <p>13 Q I understand.</p> <p>14 I asked you whether there was</p> <p>15 a provision, not whether there's an</p> <p>16 implied covenant.</p> <p>17 A I would consider an implied</p> <p>18 covenant a provision of the agreement.</p> <p>19 I would consider -- I would consider</p> <p>20 given other things that I found in the</p> <p>21 evidence as to how these two</p> <p>22 songwriters were treated by their music</p> <p>23 publishing company. And I went through</p> <p>24 a long list of things that I felt were</p> <p>25 breaches of contract -- and that is a</p>	<p style="text-align: right;">Page 493</p> <p>1 KOHN</p> <p>2 libraries.</p> <p>3 A They're the two libraries</p> <p>4 that one says Mix Tape and one says</p> <p>5 Hype and they seems to be the two --</p> <p>6 where are the rest? Show us the rest,</p> <p>7 and we'll see.</p> <p>8 (Excerpt from the book</p> <p>9 entitled, Kohn On Music Licensing,</p> <p>10 was marked K Exhibit 6, for</p> <p>11 identification, as of this date.)</p> <p>12 Q I don't have to.</p> <p>13 I'm going to give you what</p> <p>14 we'll mark as Exhibit 6, another page</p> <p>15 from your book and your father's book.</p> <p>16 And this relates to value.</p> <p>17 I'm going to read under quantitative</p> <p>18 factors effecting value.</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And it says, about halfway</p> <p>22 in, a music publisher with thousands of</p> <p>23 songs in its catalog and with years of</p> <p>24 experience in licensing music is likely</p> <p>25 to have access to much of the</p>

<p style="text-align: right;">Page 750</p> <p>1</p> <p>2 A I answered your question.</p> <p>3 Q Okay.</p> <p>4 (Time noted: 1:47 a.m.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 752</p> <p>1</p> <p>2 CERTIFICATION</p> <p>3</p> <p>4 STATE OF NEW YORK )</p> <p>5 ) ss.:</p> <p>6 COUNTY OF NEW YORK )</p> <p>7</p> <p>8 I, JUDITH CASTORE, Shorthand Reporter</p> <p>9 and Notary Public within and for the State</p> <p>10 of New York, do hereby certify:</p> <p>11 That ROBERT H. KOHN, the witness</p> <p>12 whose deposition is hereinbefore set</p> <p>13 forth, was duly sworn by me and that this</p> <p>14 transcript of such examination is a true</p> <p>15 witness.</p> <p>16 I further certify that I am not</p> <p>17 related to any of the parties to this</p> <p>18 action by blood or marriage and that I am</p> <p>19 in no way interested in the outcome of</p> <p>20 this matter.</p> <p>21 IN WITNESS WHEREOF, I have hereunto</p> <p>22 set my hand this 8th day of November,</p> <p>23 2018.</p> <p>24 <i>Judith Castore</i></p> <p>25 JUDITH CASTORE</p>
<p style="text-align: right;">Page 751</p> <p>1</p> <p>2 STATE OF _____ )</p> <p>3 ) :ss</p> <p>4 COUNTY OF _____ )</p> <p>5</p> <p>6</p> <p>7 I, ROBERT H. KOHN, the witness</p> <p>8 herein, having read the foregoing</p> <p>9 testimony of the pages of this deposition,</p> <p>10 do hereby certify it to be a true and</p> <p>11 correct transcript, subject to the</p> <p>12 corrections, if any, shown on the attached</p> <p>13 page.</p> <p>14</p> <p>15 _____</p> <p>16 ROBERT H. KOHN</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Sworn and subscribed to before me,</p> <p>21 this _____ day of _____, 2018.</p> <p>22 _____</p> <p>23 Notary Public</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 753</p> <p>1</p> <p>2 INDEX</p> <p>3 WITNESS PAGE</p> <p>4 ROBERT H. KOHN</p> <p>5 Examination by:</p> <p>6 MR. ZAKARIN 4</p> <p>7 MR. HWANG 547</p> <p>8</p> <p>9 EXHIBITS</p> <p>10 K PAGE</p> <p>11 Exhibit 1 Expert Report of Bob Kohn, August 15</p> <p>12 17, 2018</p> <p>13 Exhibit 2 Blanket Composer Agreement 65</p> <p>14 (Direct) dated as of May 19, 2010</p> <p>15 Exhibit 3 March 7, 2011 Agreement 147</p> <p>16 Exhibit 4 Excerpt from the book entitled, 201</p> <p>17 Kohn On Music Licensing</p> <p>18 Exhibit 5 Document entitled, Turner - BMI 339</p> <p>19 Music Performance License</p> <p>20 Agreement</p> <p>21 Exhibit 6 Excerpt from the book entitled, 493</p> <p>22 Kohn On Music Licensing</p> <p>23 Exhibit 7 Excerpts from the book entitled, 613</p> <p>24 Kohn On Music Licensing</p> <p>25 Exhibit 8 Form 8.2, Multi-Purpose Work For 631</p> <p>26 Hire Agreement</p> <p>27 Exhibit 9 Multi-page document containing 695</p> <p>28 cue sheets</p> <p>29 Exhibit 10 Printout from IMDB.com of all 20 699</p> <p>30 episodes from the two seasons of</p> <p>31 the show Ain't That America</p> <p>32 Exhibit 11 Cue sheets corresponding to K 699</p> <p>33 Exhibit 10</p> <p>34 Exhibit 12 Document, Bates-stamped 730</p> <p>35 VIACOM_0000568 through 667</p>



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## INSTRUCTIONS TO WITNESS

1  
2  
3 Please read your deposition over carefully  
4 and make any necessary corrections. You should state  
5 the reason in the appropriate space on the errata  
6 sheet for any corrections that are made.  
7 After doing so, please sign the errata sheet  
8 and date it.  
9 You are signing same subject to the changes  
10 you have noted on the errata sheet, which will be  
11 attached to your deposition.  
12 It is imperative that you return the original  
13 errata sheet to the deposing attorney within thirty  
14 (30) days of receipt of the deposition transcript by  
15 you. If you fail to do so, the deposition transcript  
16 may be deemed to be accurate and may be used in court.  
17  
18  
19  
20  
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24  
25

Page 755

## E R R A T A

1  
2  
3  
4  
5 I wish to make the following changes,  
6 for the following reasons:  
7  
8 PAGE LINE  
9 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
10 REASON: \_\_\_\_\_  
11 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
12 REASON: \_\_\_\_\_  
13 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
14 REASON: \_\_\_\_\_  
15 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
16 REASON: \_\_\_\_\_  
17 \_\_\_\_\_ CHANGE: \_\_\_\_\_  
18 REASON: \_\_\_\_\_  
19  
20 \_\_\_\_\_  
21 ROBERT H. KOHN DATE \_\_\_\_\_  
22 SUBSCRIBED AND SWORN TO BEFORE  
23 ME THIS \_\_\_\_ DAY OF \_\_\_\_\_, 201 .  
24  
25 \_\_\_\_\_  
NOTARY PUBLIC COMMISSION EXPIRES

190 (Pages 754 - 755)

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS  
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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# Robert Kohn Deposition Volume 2

<p style="text-align: right;">Page 1</p> <p>1 2 UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK 3 -----X 4 TWELVE SIXTY LLC, ARON MARDEROSIAN, and ROBERT MARDEROSIAN, 5 6 Plaintiffs, 7 8 vs. Civil Action No. 1:17-CV-01479-PAC 9 EXTREME MUSIC LIBRARY LIMITED, a division of Sony/ATV Music Publishing; EXTREME MUSIC LIMITED; VIACOM INTERNATIONAL INC., NEW CREATIVE MIX INC., HYPE PRODUCTION MUSIC, 10 Defendants. 11 -----X 12 13 14 15 VOLUME II 16 CONTINUED DEPOSITION OF 17 ROBERT H. KOHN 18 New York, New York 19 Friday, November 2, 2018 20 21 22 23 24 Reported by: JOAN WARNOCK 25 JOB NO. J3015335A</p>	<p style="text-align: right;">Page 3</p> <p>1 2 A P P E A R A N C E S: 3 4 MARDEROSIAN &amp; COHEN, 5 A Professional Corporation 6 Attorneys for Plaintiffs 7 1260 Fulton Street 8 Fresno, California 93721 9 BY: MICHAEL G. MARDEROSIAN, ESQ. 10 HEATHER S. COHEN, ESQ. 11 12 PRYOR CASHMAN LLP 13 Attorneys for Defendants Extreme Music 14 Library Limited and Extreme Music Limited 15 7 Times Square 16 New York, New York 10036 17 BY: DONALD S. ZAKARIN, ESQ. 18 ROSS M. BAGLEY, ESQ. 19 YEVGENIA S. KLEINER, ESQ. 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 2 3 November 2, 2018 4 9:10 a.m. 5 6 VOLUME II - Continued deposition of 7 ROBERT H. KOHN, held at the offices of 8 Pryor Cashman LLP, 7 Times Square, 9 New York, New York, pursuant to Notice, 10 before Joan Warnock, a Notary Public of 11 the State of New York. 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 2 A P P E A R A N C E S: (Cont'd.) 3 4 LOEB &amp; LOEB LLP 5 Attorneys for Defendants Viacom 6 International Inc., New Creative 7 Mix Inc., and Hype Production Music 8 345 Park Avenue 9 New York, New York 10154 10 BY: WOOK J. HWANG, ESQ. 11 ERIN SMITH DENNIS, ESQ. 12 13 14 ALSO PRESENT: 15 DAVID J. PRZYGODA, SONY CORPORATION OF 16 AMERICA 17 BARRY MASSARSKY 18 19 20 21 22 23 24 25</p>

<p style="text-align: right;">Page 5</p> <p>1 R. Kohn</p> <p>2 ROBERT H. KOHN, called as a</p> <p>3 witness, having been duly sworn by</p> <p>4 a Notary Public, was examined and</p> <p>5 testified further as follows:</p> <p>6 COURT REPORTER: Please state your</p> <p>7 name for the record.</p> <p>8 THE WITNESS: Robert H. Kohn.</p> <p>9 EXAMINATION (Cont'd.)</p> <p>10 BY MR. HWANG:</p> <p>11 Q. Good morning, Mr. Kohn.</p> <p>12 A. Good morning.</p> <p>13 Q. You recall the instructions from</p> <p>14 yesterday?</p> <p>15 A. The instructions?</p> <p>16 Q. Yes. The instructions, namely,</p> <p>17 that we shouldn't speak over each other?</p> <p>18 A. Oh, the admonitions.</p> <p>19 Q. Right.</p> <p>20 A. Yes.</p> <p>21 Q. Let's try not to do that for the</p> <p>22 sake of the reporter. So, Mr. Kohn,</p> <p>23 throughout your report you raised several</p> <p>24 instances in which -- several bases for</p> <p>25 contending that the Marderosians may not have</p>	<p style="text-align: right;">Page 7</p> <p>1 R. Kohn</p> <p>2 Q. So other than in the case of direct</p> <p>3 public performance licenses, there's no</p> <p>4 obligation from Viacom, New Creative, or</p> <p>5 Extreme to pay any public performance</p> <p>6 royalties to the Marderosians; correct?</p> <p>7 MR. MARDEROSIAN: Objection. Calls</p> <p>8 for a legal conclusion.</p> <p>9 A. They have an obligation to pay BMI.</p> <p>10 BMI pays the Marderosians.</p> <p>11 Q. Okay. And that payment to BMI from</p> <p>12 Viacom would be in the form of a blanket</p> <p>13 license fee?</p> <p>14 A. Yes.</p> <p>15 Q. Pursuant to the separate agreement</p> <p>16 between BMI and Viacom --</p> <p>17 A. That's correct.</p> <p>18 Q. -- correct?</p> <p>19 MR. MARDEROSIAN: Objection. Calls</p> <p>20 for a legal opinion.</p> <p>21 Q. Have you undertaken any analysis to</p> <p>22 determine how much the Marderosians were</p> <p>23 purportedly underpaid in the writer's share</p> <p>24 of public performance income?</p> <p>25 A. No. I was not asked to opine on</p>
<p style="text-align: right;">Page 6</p> <p>1 R. Kohn</p> <p>2 received their full entitlement to public</p> <p>3 performance royalties. Is that an accurate</p> <p>4 characterization?</p> <p>5 A. May not have received their --</p> <p>6 okay. Yes.</p> <p>7 Q. From BMI; right?</p> <p>8 A. Yeah. Well, may not have received</p> <p>9 their public performance royalties.</p> <p>10 Q. There's no obligation from Viacom,</p> <p>11 New Creative, or Extreme to pay the public</p> <p>12 performance royalties; right?</p> <p>13 MR. MARDEROSIAN: Objection. Calls</p> <p>14 for a legal conclusion.</p> <p>15 A. Well, to the extent they issued</p> <p>16 direct performance licenses, they need to do</p> <p>17 that.</p> <p>18 Q. As a share of the gross receipts,</p> <p>19 as that term is defined --</p> <p>20 A. As gross receipts, right.</p> <p>21 Q. As that term is defined in the 2011</p> <p>22 --</p> <p>23 A. Yes.</p> <p>24 Q. -- Composer Agreement?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 8</p> <p>1 R. Kohn</p> <p>2 that.</p> <p>3 Q. So you don't actually know if they</p> <p>4 were underpaid?</p> <p>5 A. There's enough evidence that I've</p> <p>6 seen in this case that suggest they were</p> <p>7 underpaid.</p> <p>8 Q. But you don't know how much?</p> <p>9 A. I don't know how much.</p> <p>10 Q. And you're not opining on how much?</p> <p>11 A. No. That's correct. I mean yes, I</p> <p>12 am not opining on how much.</p> <p>13 Q. If the Marderosians weren't paid</p> <p>14 public performance income for a particular</p> <p>15 use, does that necessarily mean that a cue</p> <p>16 sheet wasn't submitted to BMI?</p> <p>17 MR. MARDEROSIAN: Objection.</p> <p>18 Incomplete hypothetical.</p> <p>19 A. I agree with that. I agree that</p> <p>20 it's an incomplete hypothetical. Does it</p> <p>21 necessarily mean?</p> <p>22 Q. Someone's going to have to explain</p> <p>23 to me what that is at some point. But go</p> <p>24 ahead.</p> <p>25 A. There was a song -- well, you'll</p>





<p style="text-align: right;">Page 49</p> <p>1 R. Kohn</p> <p>2 in the exhibit to the co-publishing</p> <p>3 agreement, joint venture agreement.</p> <p>4 Q. Is it direct --</p> <p>5 A. And then --</p> <p>6 Q. Wait a second. Let me --</p> <p>7 A. Let me answer your question.</p> <p>8 Q. Wait a second.</p> <p>9 A. No, no, no, no. I get to answer</p> <p>10 the question first. I get to answer the</p> <p>11 question.</p> <p>12 Q. Go ahead.</p> <p>13 A. On the direct performance side, I</p> <p>14 extrapolated that that license would include</p> <p>15 a direct performance license from the</p> <p>16 statements that were made and the evidence</p> <p>17 that I saw here in Dan Pounder's declaration</p> <p>18 and some of the other declarations or</p> <p>19 depositions or whatever that -- and the</p> <p>20 statements that are even made in this</p> <p>21 litigation that Viacom, because it's a work</p> <p>22 for hire, has no obligation to pay for the</p> <p>23 use of any -- no obligation to pay monies</p> <p>24 that would generate gross receipts, that</p> <p>25 50 percent of which the plaintiffs would be</p>	<p style="text-align: right;">Page 51</p> <p>1 R. Kohn</p> <p>2 A. By basically granting itself a</p> <p>3 direct public performance license.</p> <p>4 Q. And thereby not feeling obligated</p> <p>5 or not submitting cue sheets to BMI?</p> <p>6 A. It doesn't matter. We don't even</p> <p>7 have to get to cue sheets. If Viacom thinks</p> <p>8 it's granted itself a direct public</p> <p>9 performance license, then it has no</p> <p>10 obligation to BMI to submit cue sheets on any</p> <p>11 of that.</p> <p>12 Q. And yesterday we established that</p> <p>13 you can't identify a single example in which</p> <p>14 Viacom didn't submit a cue sheet for a</p> <p>15 program that aired on a Viacom network;</p> <p>16 correct?</p> <p>17 MR. MARDEROSIAN: I'm going to</p> <p>18 object. It calls for speculation and</p> <p>19 incomplete hypothetical.</p> <p>20 A. As I just said, Viacom has an</p> <p>21 obligation to submit cue sheets to BMI for</p> <p>22 programs. We just read it in the contract.</p> <p>23 We just read it, right, in the A&amp;E contract.</p> <p>24 We haven't seen the Viacom agreement with</p> <p>25 BMI. We can read it in that to actually see</p>
<p style="text-align: right;">Page 50</p> <p>1 R. Kohn</p> <p>2 entitled to. So the statement that you're</p> <p>3 making that Viacom doesn't owe any money,</p> <p>4 doesn't owe anything that would generate</p> <p>5 gross receipts under the 2011 agreement,</p> <p>6 suggests to me that you think you have a</p> <p>7 direct performance license.</p> <p>8 Q. Let me turn your attention to</p> <p>9 Page 84 of the report. Page 84 of the</p> <p>10 report.</p> <p>11 A. Go ahead.</p> <p>12 Q. You state that Viacom received,</p> <p>13 quote, a direct public performance license</p> <p>14 for that music in circumvention of BMI's</p> <p>15 collection and distribution of writer's share</p> <p>16 performance fees to Aron and Robert's music,</p> <p>17 a clear violation of the benefit of their</p> <p>18 bargain with Viacom. Do you see that?</p> <p>19 A. That was my conclusion. That is my</p> <p>20 opinion based upon what I said earlier just a</p> <p>21 few moments ago, and that is reflected in</p> <p>22 this report.</p> <p>23 Q. How did Viacom circumvent BMI's</p> <p>24 collection and distribution of writer's share</p> <p>25 performance fees to Robert and Aron?</p>	<p style="text-align: right;">Page 52</p> <p>1 R. Kohn</p> <p>2 what the obligation that Viacom had. But as</p> <p>3 a practical matter, I haven't seen any of</p> <p>4 these -- just because it's in a cue sheet</p> <p>5 doesn't mean you didn't have a direct</p> <p>6 performance license, because as a practical</p> <p>7 matter, you generate a cue sheet of all of</p> <p>8 the musical works that are in an episode in a</p> <p>9 program, as I explained.</p> <p>10 Q. So if a cue sheet is submitted, and</p> <p>11 there's a direct public performance license,</p> <p>12 and BMI royalties are paid out to the</p> <p>13 writers, what is the harm in having a direct</p> <p>14 public performance license, if any?</p> <p>15 A. Well, think of all the -- well,</p> <p>16 there are lots of -- direct public</p> <p>17 performance licenses were not only issued to</p> <p>18 Viacom. They were issued to all of the major</p> <p>19 networks.</p> <p>20 Q. Let's stick to Viacom.</p> <p>21 A. No.</p> <p>22 Q. Because that's what I'm asking you</p> <p>23 about.</p> <p>24 A. No. No. You asked me a broader</p> <p>25 question.</p>

<p style="text-align: right;">Page 53</p> <p>1 R. Kohn</p> <p>2 Q. No, that's not what I asked you. I</p> <p>3 referred you to 84 of your report in which</p> <p>4 you say Viacom improperly received a direct</p> <p>5 public performance license, quote, in</p> <p>6 circumvention of BMI's collection and</p> <p>7 distribution of writer's share performance</p> <p>8 fees to Aron and Robert's music. Do you see</p> <p>9 that?</p> <p>10 MR. MARDEROSIAN: Mr. Hwang, you're</p> <p>11 arguing with the witness.</p> <p>12 MR. HWANG: I'm trying to speed</p> <p>13 this up for your sake.</p> <p>14 MR. MARDEROSIAN: Well, I</p> <p>15 appreciate it, but you have to ask</p> <p>16 better questions so that we can move</p> <p>17 this along. He's trying to answer your</p> <p>18 questions.</p> <p>19 A. It could explain -- just because</p> <p>20 BMI received a cue sheet with information on</p> <p>21 it regarding one of the plaintiff's songs</p> <p>22 doesn't mean they actually paid the public</p> <p>23 performance royalty. If they have</p> <p>24 information from some source, whether it's</p> <p>25 Extreme or Viacom, right, that there was a</p>	<p style="text-align: right;">Page 55</p> <p>1 R. Kohn</p> <p>2 Q. I'm just asking you to identify a</p> <p>3 single instance, if you can.</p> <p>4 A. It was a breach of contract to give</p> <p>5 yourself a direct public performance license,</p> <p>6 which is what you've been saying during this</p> <p>7 litigation.</p> <p>8 Q. Thank you, Judge Kohn.</p> <p>9 A. That you have --</p> <p>10 Q. Thank you, Judge Kohn.</p> <p>11 A. I'm not --</p> <p>12 Q. I'm asking you a factual question.</p> <p>13 Are you aware of a single instance in which</p> <p>14 this purported direct public performance</p> <p>15 license to Viacom resulted in a nonpayment of</p> <p>16 public performance royalties to Aron and</p> <p>17 Robert?</p> <p>18 MR. MARDEROSIAN: Objection. It</p> <p>19 calls for speculation. Incomplete</p> <p>20 hypothetical.</p> <p>21 A. How can I trace something that's</p> <p>22 not in a BMI statement, okay. It won't be in</p> <p>23 a -- nonpayment means not in BMI's statement.</p> <p>24 How can I look at a BMI statement to the</p> <p>25 plaintiffs and determine how a payment wasn't</p>
<p style="text-align: right;">Page 54</p> <p>1 R. Kohn</p> <p>2 direct public performance license, BMI would</p> <p>3 not pay. And that might explain why they're</p> <p>4 not getting paid from BMI what they think</p> <p>5 they should be paid.</p> <p>6 Q. Are you aware of any such instance</p> <p>7 in which this purported direct public</p> <p>8 performance license to Viacom resulted in a</p> <p>9 nonpayment of the writer's share of public</p> <p>10 performance fees to Aron and Robert?</p> <p>11 MR. MARDEROSIAN: Calls for</p> <p>12 speculation. Incomplete hypothetical.</p> <p>13 A. I go back to the extract that you</p> <p>14 provided to us. What explains the fact that</p> <p>15 there was Bayham receiving all of this and</p> <p>16 the writers not receiving it.</p> <p>17 Q. Okay. Other than that, is there</p> <p>18 any other instance in which you're aware that</p> <p>19 the purported direct public performance</p> <p>20 license to Viacom result in a nonpayment of</p> <p>21 public performance fees to Aron and Robert?</p> <p>22 A. When you --</p> <p>23 MR. MARDEROSIAN: Objection. Calls</p> <p>24 for speculation. Incomplete</p> <p>25 hypothetical.</p>	<p style="text-align: right;">Page 56</p> <p>1 R. Kohn</p> <p>2 made? What I need to do is go back and look</p> <p>3 at the TuneSat data which will show me all of</p> <p>4 the broadcasts for public performances of all</p> <p>5 those audiovisual works. That would allow me</p> <p>6 to do that. That was denied to me, okay, so</p> <p>7 I could not do that.</p> <p>8 Q. So you're not aware sitting here</p> <p>9 today of any such instance?</p> <p>10 MR. MARDEROSIAN: Same objection.</p> <p>11 It calls for speculation. Incomplete</p> <p>12 hypothetical.</p> <p>13 A. How am I going to be aware of an</p> <p>14 instance of something that I don't have the</p> <p>15 information to even determine? I can't match</p> <p>16 a nonpayment to something that I don't have</p> <p>17 the information on.</p> <p>18 Q. So you're not aware of any such</p> <p>19 instance?</p> <p>20 A. The only way I would be aware of it</p> <p>21 is to be aware of the actual performances.</p> <p>22 You're asking me to have watched television</p> <p>23 full-time all of Viacom networks since 2010.</p> <p>24 That would be the only way to do it, for me</p> <p>25 to let you know of a particular instance</p>

<p style="text-align: right;">Page 57</p> <p>1 R. Kohn</p> <p>2 without having the TuneSat data.</p> <p>3 Q. So you're not aware of a single</p> <p>4 instance sitting here today?</p> <p>5 A. That's correct. But I suggest that</p> <p>6 Extreme is aware of it because it has the</p> <p>7 data.</p> <p>8 Q. And you speculated that Viacom or</p> <p>9 Extreme may have told BMI that Viacom has a</p> <p>10 direct public performance license and</p> <p>11 therefore BMI doesn't need to pay the</p> <p>12 writer's share of public performance</p> <p>13 royalties?</p> <p>14 A. That's not my testimony. I did not</p> <p>15 say that.</p> <p>16 Q. You said that might have happened,</p> <p>17 right, in that case that BMI wouldn't pay the</p> <p>18 writer's share. Wasn't that your testimony?</p> <p>19 A. I didn't speculate on anything. I</p> <p>20 said that if BMI had received information</p> <p>21 that it could put into its systems, I mean</p> <p>22 this is what I would say now, with respect to</p> <p>23 a particular set of programs and a particular</p> <p>24 set of musical works, or I should say a</p> <p>25 network that produces programs under their</p>	<p style="text-align: right;">Page 59</p> <p>1 R. Kohn</p> <p>2 Q. Okay. If Viacom had a direct</p> <p>3 public performance license, they also</p> <p>4 wouldn't have received the publisher's share</p> <p>5 of public performance royalties for uses of</p> <p>6 the songs at issue on Viacom programming;</p> <p>7 isn't that right?</p> <p>8 A. BMI would have received the</p> <p>9 publisher's share?</p> <p>10 Q. If Viacom had a direct public</p> <p>11 performance license --</p> <p>12 A. Oh. Okay. Viacom.</p> <p>13 Q. Viacom also wouldn't have received</p> <p>14 any publisher's share of performance income</p> <p>15 for programming on its network?</p> <p>16 A. That's correct.</p> <p>17 Q. Are you aware of any instance in</p> <p>18 which Viacom didn't receive the publisher's</p> <p>19 share of public performance income as a</p> <p>20 result of this purported direct public</p> <p>21 performance license that it received from</p> <p>22 Extreme?</p> <p>23 A. I have not been provided with any</p> <p>24 information as to what Viacom -- well, except</p> <p>25 for the extract, I'm not sure whether that</p>
<p style="text-align: right;">Page 58</p> <p>1 R. Kohn</p> <p>2 agreement, then they wouldn't pay.</p> <p>3 Q. Are you aware of any such</p> <p>4 communications?</p> <p>5 A. No.</p> <p>6 Q. Okay. If --</p> <p>7 A. Let me just take that back. I</p> <p>8 remember seeing in the file several letters</p> <p>9 that Extreme -- I believe that Extreme wrote</p> <p>10 to a performance rights society, it might</p> <p>11 have been BMI, I'm just doing this from</p> <p>12 memory, that let BMI know that certain</p> <p>13 catalogs of their works were subject to a</p> <p>14 direct performance license. I don't know if</p> <p>15 it was the Viacom network. But I did see</p> <p>16 that in the file.</p> <p>17 Q. Other than that, you're not aware</p> <p>18 of any such communications?</p> <p>19 A. Well, there might have been others</p> <p>20 that I haven't seen.</p> <p>21 Q. So you're not aware of any such</p> <p>22 communications?</p> <p>23 A. I'm not aware. I'm not aware of --</p> <p>24 none of those potential communications have</p> <p>25 been brought to my attention.</p>	<p style="text-align: right;">Page 60</p> <p>1 R. Kohn</p> <p>2 was Viacom or not now, what's in there. I</p> <p>3 have not received -- other than the extract</p> <p>4 that I have seen, no, I have not seen that.</p> <p>5 Q. The fundamental predicate to what I</p> <p>6 just asked you is that Viacom as a</p> <p>7 copublisher is entitled to receive</p> <p>8 publisher's share of public performance</p> <p>9 income from BMI; correct?</p> <p>10 A. Yes.</p> <p>11 Q. Including --</p> <p>12 MR. MARDEROSIAN: Well, actually,</p> <p>13 in reality, the evidence --</p> <p>14 MR. HWANG: Just stop.</p> <p>15 MR. MARDEROSIAN: -- in the case is</p> <p>16 that --</p> <p>17 MR. HWANG: Just stop testifying.</p> <p>18 MR. MARDEROSIAN: -- Extreme pays</p> <p>19 Viacom. BMI does not pay Viacom. So</p> <p>20 your question is not consistent with the</p> <p>21 evidence. It misstates the evidence.</p> <p>22 It's an incomplete hypothetical. It</p> <p>23 comes from Extreme. They administer,</p> <p>24 they collect everything. Your own</p> <p>25 30(b)(6) witness Anita Chinkes said</p>

<p style="text-align: right;">Page 109</p> <p>1 R. Kohn</p> <p>2 Q. Weren't you concerned, then, if</p> <p>3 it's not in the extracts, that maybe somehow</p> <p>4 meta data was bad and the Marderosians were</p> <p>5 not being paid on that song?</p> <p>6 MR. MARDEROSIAN: Objection.</p> <p>7 Incomplete hypothetical.</p> <p>8 Q. You can answer.</p> <p>9 MR. MARDEROSIAN: Calls for</p> <p>10 speculation.</p> <p>11 A. I was concerned when I didn't see</p> <p>12 it in the extracts because I understand that</p> <p>13 was supposed to cover all the songs.</p> <p>14 Q. But when you went back --</p> <p>15 A. But, but I didn't go back in every</p> <p>16 occasion to look at whether something</p> <p>17 appeared on a BMI. If I did that throughout</p> <p>18 the three months of my preparing the expert</p> <p>19 report, I would never have gotten it done.</p> <p>20 Q. And you saw on the other document,</p> <p>21 which I think it was Katz 6, that we</p> <p>22 produced, that Extreme produced that it</p> <p>23 reflected on Teenage Vamps that there was a</p> <p>24 substantial amount of performance income that</p> <p>25 Extreme received for Teenage Vamps; right?</p>	<p style="text-align: right;">Page 111</p> <p>1 R. Kohn</p> <p>2 Q. The question was --</p> <p>3 A. And lots of questions are not</p> <p>4 properly phrased, so I have to --</p> <p>5 Q. I know I'm not up to your</p> <p>6 standards, but I'll try. So here we go.</p> <p>7 You didn't look to see, having</p> <p>8 looked at the extract that you saw, there was</p> <p>9 Teenage Vamps was not listed, having looked</p> <p>10 at Exhibit 6, you saw that money was paid to</p> <p>11 Extreme on Teenage Vamps, you didn't look at</p> <p>12 the BMI statements to see were the</p> <p>13 Marderosians paid on Teenage Vamps; is that</p> <p>14 right?</p> <p>15 MR. MARDEROSIAN: Meaning did he do</p> <p>16 a comparison to see if the performance</p> <p>17 royalties supposedly reported by Extreme</p> <p>18 matched the performance royalties of</p> <p>19 Aron and Robert's BMI statements for the</p> <p>20 exploitation of Teenage Vamps? Is that</p> <p>21 the question?</p> <p>22 MR. ZAKARIN: Read back my</p> <p>23 question, not Mr. Marderosian's speech.</p> <p>24 MR. MARDEROSIAN: No. Mine is the</p> <p>25 more accurate question.</p>
<p style="text-align: right;">Page 110</p> <p>1 R. Kohn</p> <p>2 Isn't that what your testimony was a few</p> <p>3 minutes ago?</p> <p>4 A. There was -- on that list there was</p> <p>5 -- it was very substantial. I don't know</p> <p>6 whether it was performance, but I -- was it</p> <p>7 performance or sync?</p> <p>8 Q. I think you testified it was</p> <p>9 performance.</p> <p>10 A. I said 34,000.</p> <p>11 Q. Okay. So that was reported and</p> <p>12 identified in a document produced by Extreme</p> <p>13 in this case; correct?</p> <p>14 A. Right. But the point --</p> <p>15 Q. No, no. I didn't ask you anything.</p> <p>16 All you need to say is "right," because that</p> <p>17 was the question asked. We'll get out of</p> <p>18 here faster, or you will, not us, if you</p> <p>19 answer my questions, not ones I didn't ask.</p> <p>20 Okay?</p> <p>21 A. What's your question?</p> <p>22 Q. Good. If you pay attention, we'll</p> <p>23 go through it.</p> <p>24 A. I've been paying attention very</p> <p>25 carefully.</p>	<p style="text-align: right;">Page 112</p> <p>1 R. Kohn</p> <p>2 MR. ZAKARIN: Well, you can ask</p> <p>3 your questions. This is my turn to ask</p> <p>4 mine.</p> <p>5 (Record read.)</p> <p>6 Q. Simple question.</p> <p>7 MR. MARDEROSIAN: Mr. Zakarin, can</p> <p>8 you identify the amount of money you're</p> <p>9 talking about that the Marderosians were</p> <p>10 paid for Teenage Vamps?</p> <p>11 Q. You can answer my question.</p> <p>12 A. I was focused on what was not being</p> <p>13 paid on, not what was. If I had to look and</p> <p>14 compare on everything that they were paid on,</p> <p>15 I'd never get the thing done.</p> <p>16 Q. So you don't know one way or the</p> <p>17 other whether they were paid on Teenage Vamps</p> <p>18 by BMI; is that right?</p> <p>19 A. I have no recollection in my mind</p> <p>20 about that.</p> <p>21 Q. And you have no idea, then, whether</p> <p>22 they were underpaid, overpaid, or paid on a</p> <p>23 comparable basis to what was received by</p> <p>24 Extreme; is that correct?</p> <p>25 A. Not on Teen -- not on --</p>

<p style="text-align: right;">Page 113</p> <p>1 R. Kohn</p> <p>2 Q. Teenage Vamps.</p> <p>3 A. Not on Teenage Vamps, but on</p> <p>4 Mulholland Drive --</p> <p>5 Q. That's the only question. Did I</p> <p>6 ask you about Mulholland Drive?</p> <p>7 A. I saw 60 pages of Mulholland Drive</p> <p>8 promotional announcements that Bayham was</p> <p>9 paid on, and they were not paid. And when I</p> <p>10 see 60 pages where Bayham is paid and are</p> <p>11 clearly identified and associated with the</p> <p>12 plaintiffs and not in the BMI statements, the</p> <p>13 only thing I can imagine is that there are</p> <p>14 other composers who were paid on those works.</p> <p>15 That's what I was focused on. Teenage Vamps</p> <p>16 was just a matter of the fact that you</p> <p>17 provided a report that didn't include it.</p> <p>18 Q. Is it possible you have a limited</p> <p>19 imagination?</p> <p>20 A. I think that's an insulting</p> <p>21 question.</p> <p>22 Q. I'll withdraw the question. You</p> <p>23 just said the only thing that you can imagine</p> <p>24 is that there was some, you know, some change</p> <p>25 in the data or it was misdirected; is that</p>	<p style="text-align: right;">Page 115</p> <p>1 R. Kohn</p> <p>2 asked him a question.</p> <p>3 A. Based on everything I've seen in</p> <p>4 this case, I have asked for and I have not</p> <p>5 seen the royalty statements that Russell</p> <p>6 Emanuel and under all of his aliases have</p> <p>7 received through ASCAP, PRS so I can make an</p> <p>8 absolute determination which composers</p> <p>9 received those royalties. And if you would</p> <p>10 show us those and be transparent about it,</p> <p>11 and perhaps Sony ATV might be very interested</p> <p>12 in knowing whether that's the case, because</p> <p>13 if it turns out to be the case, we all have</p> <p>14 problems.</p> <p>15 Q. Okay. Now that you just finished</p> <p>16 that long statement, the question was not</p> <p>17 what you didn't see, what you didn't get to</p> <p>18 see, whether you were entitled to see it. My</p> <p>19 question was much simpler.</p> <p>20 A. I answered your question.</p> <p>21 Q. Then what was the speech for?</p> <p>22 A. That was my answer.</p> <p>23 Q. I don't think I asked anything</p> <p>24 relating to that.</p> <p>25 MR. ZAKARIN: I have no further</p>
<p style="text-align: right;">Page 114</p> <p>1 R. Kohn</p> <p>2 right?</p> <p>3 A. It's a figure of speech. I said</p> <p>4 earlier --</p> <p>5 Q. Oh. It's a figure of speech when</p> <p>6 you say it's the only thing you can imagine.</p> <p>7 Let me just try it. Other --</p> <p>8 MR. MARDEROSIAN: You're getting</p> <p>9 argumentative, Don. Argumentative.</p> <p>10 Q. Are there other possibilities that</p> <p>11 you could imagine, Mr. Kohn?</p> <p>12 MR. MARDEROSIAN: He's not going to</p> <p>13 speculate. He's not going to speculate.</p> <p>14 MR. ZAKARIN: That's all he's done</p> <p>15 today.</p> <p>16 MR. MARDEROSIAN: Incorrect.</p> <p>17 That's an argumentative and insulting</p> <p>18 statement. And I object to that.</p> <p>19 MR. ZAKARIN: It's an accurate</p> <p>20 statement.</p> <p>21 A. I would like to see, given what --</p> <p>22 MR. MARDEROSIAN: It's based on the</p> <p>23 evidence that you've produced in the</p> <p>24 case.</p> <p>25 MR. ZAKARIN: I understand. I've</p>	<p style="text-align: right;">Page 116</p> <p>1 R. Kohn</p> <p>2 questions.</p> <p>3 MR. MARDEROSIAN: Thank you, Don.</p> <p>4 Are we done?</p> <p>5 MR. HWANG: Close it out.</p> <p>6 MR. MARDEROSIAN: Same stipulation</p> <p>7 as we reached with the other experts</p> <p>8 where I get the original, notify you of</p> <p>9 any changes. We good with that?</p> <p>10 MR. ZAKARIN: Yes.</p> <p>11 (Time noted: 11:00 a.m.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16 _____</p> <p>17 ROBERT H. KOHN</p> <p>18</p> <p>19 Subscribed and sworn to before me</p> <p>20 this ____ day of _____, 2018.</p> <p>21 _____</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>





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CERTIFICATE

STATE OF NEW YORK )

: ss.

COUNTY OF WESTCHESTER )

I, JOAN WARNOCK, a Notary Public

within and for the State of New York, do

hereby certify:

That ROBERT H. KOHN, the witness

whose deposition is hereinbefore set

forth, was duly sworn by me and that

such deposition is a true record of the

testimony given by the witness.

I further certify that I am not

related to any of the parties to this

action by blood or marriage, and that I

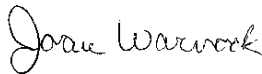
am in no way interested in the outcome

of this matter.

IN WITNESS WHEREOF, I have hereunto

set my hand this 8th day of November,

2018.



JOAN WARNOCK

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Deposition

EXHIBIT K-16 80

Subextract taken from extract

produced by Extreme, Exhibit 8 to

Katz Deposition

EXHIBIT K-17 87

Spread sheet produced by Extreme

setting forth performance value of

Aron and Robert's songs compared to

other songs

EXHIBIT K-18 92

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DEPOSITION ERRATA SHEET

Our Assignment No.: J3015335A

Case Caption: Twelve Sixty LLC vs. Extreme

Music Library Limited

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury

that I have read the entire transcript of my

Deposition taken in the captioned matter or

the same has been read to me, and the same is

true and accurate, save and except for

changes and/or corrections, if any, as

indicated by me on the DEPOSITION ERRATA

SHEET hereof, with the understanding that I

offer these changes as if still under oath.

Robert H. Kohn

Subscribed and sworn to on the \_\_\_\_ day of

\_\_\_\_\_, 20 \_\_\_\_ before me.

Notary Public,

in and for the State of

\_\_\_\_\_.





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**ESQUIRE**  
DEPOSITION SOLUTIONS